

1324

United States

Circuit Court of Appeals

For the Ninth Circuit.

THE PRUDENTIAL INSURANCE COMPANY
OF AMERICA, a Corporation, and MU-
TUAL LIFE INSURANCE COMPANY OF
NEW YORK, a Corporation,

Plaintiffs in Error,

vs.

MAUDE E. STEWART,

Defendant in Error.

Transcript of Record.


Upon Writs of Error to the United States District
Court of the Western District of Washington,
Southern Division.

FILED



OCT 2 - 1922

F. D. MONCKTON,
CLERK.



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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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Names and Addresses of Attorneys of Record.

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ant in Error. [1*]

*Page-number appearing at foot of page of original certified
Transcript of Record.

In the United States District Court, for the Western District of Washington, Southern Division.

No. 3436.

MAUDE E. STEWART,

Plaintiff,

vs.

THE PRUDENTIAL INSURANCE COMPANY
OF AMERICA, a Corporation,

Defendant.

Complaint.

The plaintiff, Maude E. Stewart, by her attorneys H. G. Fitch and Hayden, Langhorne & Metzger, & A. H. Imus brings this, her action against The Prudential Insurance Company of America, a corporation, organized and existing under and by virtue of the laws of the state of New Jersey, and for a cause of action alleges:

I.

That at all the times hereinafter mentioned the plaintiff, Maude E. Stewart, was and is now a citizen of the State of Washington, residing at Kelso, Cowlitz County, within the Southern Division of the Western District of the State of Washington.

II.

That at all the times hereinafter mentioned the defendant, The Prudential Insurance Company of America, was and is now a corporation duly organized and existing under and by virtue of the

laws of the state of New Jersey, and a resident and citizen of that state, and has been admitted to do business in the state of Washington, having complied with the laws of said state relative to foreign corporations transacting business within its boundaries. [2]

III.

That the matter and amount in the above-entitled action exceed, exclusive of costs or interest, the sum or value of \$3,000.

IV.

That on the 17th day of April, 1917, the defendant in consideration of the annual premium of \$749.50 paid by Frederick L. Stewart, then of Kelso, Cowlitz County, Washington, made their policy of insurance in writing, of which a copy is hereto annexed marked Exhibit "A," and made a part of this complaint as fully as if set out herein, and thereby insured the life of the said Frederick L. Stewart in the sum of \$25,000.

V.

That on the 17th day of March, 1921, the said Frederick L. Stewart, the insured, departed this life. That on said date the policy of insurance attached hereto and marked Exhibit "A" was in full force and effect, the last annual premium having been paid thereon.

VI.

That the plaintiff, Maude E. Stewart, is the identical person named in said policy of insurance as the beneficiary, and was prior to the 17th day of

March, 1921, the wife and is now the widow of the said Frederick L. Stewart.

VII.

That prior to the commencement of this action the plaintiff furnished to the defendant, The Prudential Insurance Company of America, a corporation, with proof of the death of the said Frederick L. Stewart, and she performed all the conditions of said contract of insurance on her part to be kept and performed. [3]

VIII.

That under and by the terms of the said policy of insurance the sum of \$25,000 became payable to the plaintiff upon receipt of proof of the death of the said Frederick L. Stewart by the defendant, The Prudential Insurance Company of America, at its home office in Newark, New Jersey, which proof of death was as heretofore alleged made to the said defendant prior to the commencement of this action.

IX.

That defendant has not paid to plaintiff the sum of \$25,000, and said sum is now due thereon to this plaintiff.

FOR A SECOND CAUSE OF ACTION PLAINTIFF ALLEGES:

I.

That at all the times hereinafter mentioned the plaintiff, Maude E. Stewart was and is now a citizen of the State of Washington, residing at Kelso, Cowlitz County, within the Southern Divi-

sion of the Western District of the state of Washington.

II.

That at all the times hereinafter mentioned the defendant, The Prudential Insurance Company of America, was and is now a corporation duly organized and existing under and by virtue of the laws of the state of New Jersey, and a resident and citizen of that state, and has been admitted to do business in the state of Washington, having complied with the laws of said state relative to foreign corporations transacting business within its boundaries.

III.

That the matter and amount in the above-entitled action exceed [4] exclusive of costs or interest, the sum or value of \$3,000.

IV.

That on the 17th day of August, 1915, the defendant in consideration of the annual premium of \$138.95, paid by Frederick L. Stewart, then of Kelso, Cowlitz County, Washington, made their policy of insurance in writing, of which a copy is hereto annexed marked Exhibit "B," and made a part of this complaint as fully as if set out herein, and hereby insured the life of the said Frederick L. Stewart in the sum of \$5,000.

V.

That on the 17th day of March, 1921, the said Frederick L. Stewart, the insured, departed this life. That on said date the policy of insurance attached hereto and maked Exhibit "B" was in full

force and effect, the last annual premium having been paid thereon.

VI.

That the plaintiff, Maude E. Stewart, is the identical person named in said policy of insurance as the beneficiary, and was prior to the 17th day of March, 1921, the wife and is now the widow of the said Frederick L. Stewart.

VII.

That prior to the commencement of this action the plaintiff furnished to the defendant, The Prudential Insurance Company of America, a corporation, with proof of the death of the said Frederick L. Stewart, and she performed all the conditions of said contract of insurance on her part to be kept and performed.

VIII.

That under and by the terms of the said policy of insurance the sum of \$5,000 became payable to the plaintiff upon receipt [5] of proof of the death of the said Frederick L. Stewart by the defendant, The Prudential Insurance Company of America, at its home office in Newark, New Jersey, which proof of death was as heretofore alleged made to the said defendant prior to the commencement of this action.

IX.

That defendant has not paid to the plaintiff the sum of \$5,000, and said sum is now due thereon to this plaintiff.

FOR A THIRD CAUSE OF ACTION PLAINTIFF ALLEGES:

I.

That at all the times hereinafter mentioned the plaintiff, Maude E. Stewart, was and is now a citizen of the State of Washington, residing at Kelso, Cowlitz County, within the Southern Division of the Western District of the State of Washington.

II.

That at all the times hereinafter mentioned the defendant, The Prudential Insurance Company of America, was and is now a corporation duly organized and existing under and by virtue of the laws of the state of New Jersey, and a resident and citizen of that state, and has been admitted to do business in the state of Washington, having complied with the laws of said state relative to foreign corporations transacting business within its boundaries.

III.

That the matter and amount in the above-entitled action exceed, exclusive of costs or interest, the sum or value of \$3,000.

IV.

That on the 7th day of August, 1916, the defendant in [6] consideration of the annual premium of \$144.25, paid by Frederick L. Stewart, then of Kelso, Cowlitz County, State of Washington, made their policy of insurance in writing, of which a copy is hereto annexed, marked Exhibit "C," and made a part of this complaint as fully as if set out herein and thereby insured the life

of the said Frederick L. Stewart in the sum of \$5,000.

V.

That on the 17th day of March, 1921, the said Frederick L. Stewart, the insured, departed this life. That on said date the policy of insurance attached hereto and marked Exhibit "C" was in full force and effect, the last annual premium having been paid thereon.

VI.

That the plaintiff, Maude E. Stewart, is the identical person named in said policy of insurance as the beneficiary, and was prior to the 17th day of March, 1921, the wife and is now the widow of the said Frederick L. Stewart.

VII.

That prior to the commencement of this action the plaintiff furnished to the defendant, The Prudential Insurance Company of America, a corporation, with proof of the death of the said Frederick L. Stewart, and she performed all the conditions of said contract of insurance on her part to be kept and performed.

VIII.

That under and by the terms of the said policy of insurance the sum of \$5,000 became payable to the plaintiff upon receipt of proof of the death of the said Frederick L. Stewart by the defendant, The Prudential Insurance Company of America, at its home office in Newark, New Jersey, which proof of death was [7] as hereinbefore alleged

made to the said defendant prior to the commencement of this action.

IX.

That the defendant has not paid to plaintiff the sum of \$5,000, and said sum is now due thereon to this plaintiff.

WHEREFORE, plaintiff prays judgment against the defendant, The Prudential Insurance Company of America, a corporation, as follows:

1. On the first cause of action in the sum of Twenty-five Thousand Dollars (\$25,000).

2. On the second cause of action in the sum of Five Thousand Dollars (\$5,000).

3. On the third cause of action in the sum of Five Thousand Dollars (\$5,000).

Or a total of Thirtyfive Thousand Dollars (\$35,000), and her costs and disbursements of this action.

H. G. FITCH,
HAYDEN, LANGHORN & METZGER,
A. H. IMUS,
Solicitors for Plaintiff.

United States of America,
Western District of Washington,
Southern Division,—ss.

H. G. Fitch, being first duly sworn, on oath deposes and says: That he is one of the attorneys for the plaintiff in the above-entitled action. That he has read the foregoing complaint, knows the contents thereof, and believes the same to be true. That he makes this verification for the reason that the plaintiff, Maude E. Stewart, is temporarily

absent from the state of Washington, and all the facts connected with the three [8] causes of action set forth in the complaint are within the personal knowledge of this affiant.

H. G. FITCH.

Subscribed and sworn to before me this 25th day of July, 1921.

[Notary Seal] M. A. LANGHORN,
Notary Public in and for the State of Washington,
Residing at Tacoma. [9]

Exhibit "A."

**THE PRUDENTIAL INSURANCE COMPANY
OF AMERICA.**

IN CONSIDERATION of the Application for this Policy, which is hereby made a part of this contract, a copy of which Application is attached hereto, and of the payment, in the manner specified, of the premium herein stated, hereby insures the life of the person herein designated as the Insured, for the amount named herein, payable as specified, subject to the provisions on the second and third pages hereof, which are hereby made part of this contract.

The Insured—Frederick L. Stewart.

Amount of Insurance—Twenty-Five Thousand Dollars, payable immediately upon receipt of due proof of the death of the insured during the continuance of this Policy, at the Home Office of the company, in Newark, New Jersey.

Payable to Maude E. Stewart, Beneficiary, Wife of the Insured.

If there be no Beneficiary living at the death of the Insured, the amount of insurance shall be payable to the executors, administrators or assigns of the Insured, unless otherwise provided in the Policy. The right to change the Beneficiary has been reserved by the Insured.

Annual Premium.—Seven Hundred Forty-Nine and 50/100 Dollars, payable on the delivery of this Policy, the receipt of which premium is hereby acknowledged, and a like amount payable thereafter annually at the Home Office of the Company, or as provided under the heading “General Provisions” on the second page hereof, in exchange for the Company’s receipt on or before the seventh day of April in every year during the continuance of this Policy.

IN WITNESS WHEREOF, the said THE PRUDENTIAL INSURANCE COMPANY OF AMERICA, at its office in the City of Newark, New Jersey has caused this policy to be signed by its President and its secretary, and to be duly attested, this seventeenth day of April, one thousand nine hundred and seventeen.

FORREST F. DRYDEN,

President.

Attest: WILLARD I. HAMILTON,

Secretary.

Age 44.

HENRY ELIE.

WHOLE LIFE POLICY—ANNUAL DIVIDENDS. PREMIUMS PAYABLE FOR LIFE.

(End of Page 1.)

Exhibit "B."

**THE PRUDENTIAL INSURANCE COMPANY
OF AMERICA.**

IN CONSIDERATION of the Application for this Policy, which is hereby made a part of this contract, a copy of which application is attached hereto, and of the payment, in the manner specified, of the premium herein stated, hereby insured the life of the person herein designated as the Insured, for the amount named herein, payable as specified, subject to the privileges and provisions on the second and third pages hereof, which are hereby made part of this contract.

**THE INSURED
FREDERICK L. STEWART.
AMOUNT OF INSURANCE
FIVE THOUSAND**

Dollars, payable immediately upon receipt of due proof of the death of the Insured during the continuance of this Policy, at the Home Office of the Company, in Newark, New Jersey.

PAYABLE TO

MAUDE E. STEWART, Beneficiary, Wife of the Insured.

If the Beneficiary survive the Insured, otherwise to the executors, administrators or assigns of the Insured.

PREMIUM.—ONE HUNDRED, THIRTY-EIGHT AND 95/100 Dollars, payable on the delivery of this Policy and thereafter annually at the Home Office of the Company, or as provided

under the heading "Provisions" on the second page hereof, in exchange for the Company's receipt on or before the seventeenth day of August in every year during the continuance of this Policy.

IN WITNESS WHEREOF, the said THE PRUDENTIAL INSURANCE COMPANY OF AMERICA, at its offices in the City of Newark, New Jersey, has caused this Policy to be signed by its President and its Secretary, and to be duly attested, this seventeenth day of August, one thousand nine hundred and fifteen.

FORREST F. DRYDEN,

President.

WILLARD I. HAMILTON,

Secretary.

Attest: FRED C. RYAN.

Age 42.

WHOLE LIFE POLICY—ANNUAL DIVIDENDS. PREMIUMS PAYABLE FOR LIFE.

(End of Page 1.)

Exhibit "C."

**THE PRUDENTIAL INSURANCE COMPANY
OF AMERICA.**

IN CONSIDERATION of the Application for this Policy, which is hereby made a part of this contract, a copy of which application is attached hereto, and of the payment, in the manner specified of the premium herein stated, hereby insures the life of the person herein designated as the Insured, for the amount named herein payable as specified, subject to the provisions on the second and third pages

hereof, which are hereby made a part of this contract.

THE INSURED—FREDERICK L. STEWART.

AMOUNT OF INSURANCE—FIVE THOUSAND Dollars, payable immediately upon receipt of due proof of the death of the Insured during the continuance of this Policy, at the Home Office of the Company, in Newark, New Jersey.

PAYABLE TO MAUDE E. STEWART, Beneficiary, Wife of the Insured.

If there be no Beneficiary living at the death of the Insured the amount of insurance shall be payable to the executors administrators, or assigns of the Insured, unless otherwise provided in the Policy. The right to change the Beneficiary has been reserved by the Insured.

ANNUAL PREMIUM—One hundred forty-four and 25/100 Dollars, payable on the delivery of this Policy, the receipt of which premium is hereby acknowledged, and a like amount payable thereafter annually at the Home Office of the Company, or as provided under the heading “General Provisions” on the second page hereof, in exchange for the company’s receipt on or before the seventh day of August, in every year during the continuance of this Policy.

IN WITNESS WHEREOF, the said THE PRUDENTIAL INSURANCE COMPANY OF AMERICA, at its office in the City of Newark, New Jersey, has caused this Policy to be signed by its President and its Secretary, and to be duly attested, this

seventh day of August, one thousand nine hundred and sixteen.

FORREST F. DRYDEN,

President.

WILLARD I. HAMILTON,

Secretary.

Attest: ORN HAULEY.

AGE 43.

WHOLE LIFE POLICY—ANNUAL DIVI-
DENDS. PREMIUMS PAYABLE FOR LIFE.

(End of Page 1.)

[Indorsed]: Aug. 1, 1922. [48]

No. 3436.

Amendment to Complaint.

Now comes the plaintiff in the above-entitled action and in compliance with the order of the Court hereby amends Paragraph V of the complaint on file in this action so that the same as amended shall read as follows:

V.

That on the 17th day of March, 1921, the said Frederick L. Stewart, the insured, departed this life, by being drowned in the waters of the Columbia River. That said Stewart fell into the waters of the said Columbia River from a ferry-boat that was at the time about one-half mile distant from the Washington shore line.

That at the time of the death of the said Frederick L. Stewart said policy of insurance was in full force

and effect, the last annual premium having been duly paid thereon."

H. G. FITCH,
HAYDEN, LANGHORNE & METZGER
and A. H. IMUS,
Attorneys for Plaintiff.

[Indorsed]: Nov. 14, 1921. [49]

No. 3436.

Answer.

Now comes the defendant and for an answer to plaintiff's complaint admits and denies:

I.

In answer to paragraph 1, of plaintiff's first cause of action, it denies the same and the whole thereof.

II.

Answering paragraph 5, of the first cause of action in said complaint, it denies the same and the whole thereof.

III.

Answering paragraph 6, of the first cause of action, it denies the plaintiff is the widow of said Frederick L. Stewart.

IV.

Answering paragraph 7, of the first cause of action in said complaint, it denies the same and the whole thereof.

V.

Answering paragraphs 8 and 9, of the first cause of action in said complaint, it denies the same and the whole thereof. [50]

VI.

Answering paragraph 1, of the second cause of action in said complaint, it denies the same and the whole thereof.

VII.

Answering paragraph 5, of the second cause of action in said complaint, it denies the same and the whole thereof.

VIII.

Answering paragraph 6, of the second cause of action in said complaint, it denies that Maude E. Stewart is the widow of said Frederick L. Stewart.

IX.

Answering paragraph 7, of the second cause of action in said complaint, it denies the same and the whole thereof.

X.

Answering paragraph 8 and 9 of the second cause of action in said complaint, it denies the same and the whole thereof.

XI.

Answering paragraph 1, of the third cause of action in said complaint, it denies the same and the whole thereof.

XII.

Answering paragraph 5, of the third cause of action in said complaint, it denies the same and the whole thereof.

XIII.

Answering paragraph 6, of the third cause of action in said complaint, it denies that Maude E. Stewart is the widow of said Frederick L. Stewart.

XIV.

Answering paragraph 7, of the third cause of action in said complaint, it denies the same and the whole thereof. [51]

XV.

Answering paragraph 8 and 9 of the third cause of action in said complaint, it denies the same and the whole thereof.

WHEREFORE, defendant prays judgment for the dismissal of said action and for its costs and disbursements.

S. A. KEENAN,

S. V. CAREY,

Attorneys for Defendant.

State of Washington,
County of King,—ss.

S. A. Keenan, being first duly sworn on his oath states: That he has read the foregoing answer and believes it to be true, that he is one of the attorneys for defendant herein; that he makes this verification for defendant because it is a foreign corporation, and none of its officers are in this state or county.

S. A. KEENAN.

Subscribed and sworn to before me this 18th day of November, 1921.

[Notarial Seal]

E. P. DONNELLY,

Notary Public in and for the State of Washington,
Residing at Seattle.

[Endorsed]: Feb. 1, 1922. [52]

No. 3437.

Complaint.

Comes now the plaintiff, Maude E. Stewart, by her attorneys, H. G. Fitch and Hayden, Langhorne & Metzger, and A. H. Imus and for a cause of action against the defendant, The Mutual Life Insurance Company of New York, alleges:

I.

That at all the times hereinafter mentioned the plaintiff, Maude E. Stewart, was and is now a citizen of the State of Washington, residing at Kelso, Cowlitz County, within the Southern Division of the Western District of said state.

II.

That at all the times hereinafter mentioned the defendant, The Mutual Life Insurance Company of New York, was and is now a foreign corporation, duly organized and existing, as plaintiff is informed and believes, under and by virtue of the laws of the state of New York, and a resident and citizen of the state of New York, but has been admitted to do business in the state of Washington, having complied with the laws of the said state of Washington relative to foreign corporations transacting business within its boundaries.

III.

That the matter and amount in the above-entitled action [53] exceeds exclusive of cost or interest, the sum or value of \$3,000.00.

IV.

That on the 15th day of July, 1915, the defendant,

The Mutual Life Insurance Company of New York, in consideration of the annual premium of \$179.20, paid to it by Frederick L. Stewart, made their policy of insurance to him in writing, of which a copy is hereunto annexed marked Exhibit "A," and made a part of this complaint and prayed to be taken as such, and thereby insured the life of the said Frederick L. Stewart, in the sum of \$5,000.

V.

That your plaintiff, Maude E. Stewart, the beneficiary named in said policy of insurance so attached hereto and marked Exhibit "A" and named as beneficiary therein, was the wife and is now the widow of the said Frederick L. Stewart, who departed this life on the 17th day of March, 1921. That at the time of the death of the said Frederick L. Stewart said policy of insurance, marked Exhibit "A" was in full force and effect, the annual premium having been duly paid thereon.

VI.

That prior to the commencement of this action the plaintiff, the beneficiary named in said policy of insurance, furnished defendant, The Mutual Life Insurance Company of New York, at its home office in the city of New York in said state, due proof of the death of the said Frederick L. Stewart, and otherwise duly performed all the conditions of said policy of insurance on her part to be by her kept and performed.

VII.

That the defendant has not paid to the plaintiff

the sum of \$5,000, and said sum is now due thereon to this plaintiff. [54]

FOR A SECOND CAUSE OF ACTION plaintiff alleges:

I.

That at all the times hereinafter mentioned the plaintiff, Maude E. Stewart, was and is now a citizen of the state of Washington, residing at Kelso, Cowlitz County, within the Southern Division of the Western District of said state.

II.

That at all the times hereinafter mentioned the defendant, The Mutual Life Insurance Company of New York, was and is now a foreign corporation, duly organized and existing as plaintiff is informed and believes, under and by virtue of the laws of the state of New York, and a resident and citizen of the state of New York, but has been admitted to do business in the state of Washington, having complied with the laws of the said state of Washington relative to foreign corporations transacting business within its boundaries.

III.

That the matter and amount in the above-entitled action exceeds, exclusive of cost or interest, the sum or value of \$3,000.

IV.

That on the 28th day of July, 1915, the defendant, The Mutual Life Insurance Company of New York, in consideration of the annual premium of \$179.20, paid to it by Frederick L. Stewart, made their policy of insurance to him in writing, of which

a copy is hereunto annexed, marked Exhibit "B," and made a part of this complaint and prayed to be taken as such, and thereby insured the life of the said Frederick L. Stewart in the sum of \$5,000.

V.

That your plaintiff, Maude E. Stewart, the beneficiary [55] named in said policy of insurance so attached hereto and marked Exhibit "B," and named as beneficiary therein, was the wife and is now the widow of the said Frederick L. Stewart, who departed this life on the 17th day of March, 1921. That at the time of the death of the said Frederick L. Stewart said policy of insurance, marked Exhibit "B" was in full force and effect, the annual premium having been duly paid thereon.

VI.

That prior to the commencement of this action the plaintiff, the beneficiary named in said policy of insurance, furnished defendant, The Mutual Life Insurance Company of New York, at its home office in the city of New York in said state, due proof of the death of the said Frederick L. Stewart, and otherwise duly performed all the conditions of said policy of insurance on her part to be by her kept and performed.

VII.

That the defendant has not paid to the plaintiff the sum of \$5,000 and said sum is now due thereon to this plaintiff.

WHEREFORE plaintiff prays judgment against the defendant, The Mutual Life Insurance Company of New York, a corporation, as follows:

1. On the first cause of action in the sum of Five Thousand Dollars (\$5,000).

2. On the second cause of action in the sum of Five Thousand Dollars (\$5,000).

Or a total of Ten Thousand Dollars (\$10,000) and her costs and disbursements of this action.

H. G. FITCH,

A. H. IMUS,

HAYDEN, LANGHORN & METZGER,

Attorneys for Plaintiff. [56]

United States of America,
Western District of Washington,
Southern Division,—ss.

H. G. Fitch, being first duly sworn, on oath deposes and says: That he is one of the attorneys for the plaintiff in the above-entitled action; that he has read the foregoing complaint, knows the contents thereof and believes the same to be true. That he makes this verification for the reason that the plaintiff Maude E. Stewart is temporarily absent from the state of Washington, and all the facts connected with the two causes of action set forth in the complaint are within the personal knowledge of this affiant.

H. G. FITCH.

Subscribed and sworn to before me this 25th day of July, 1921.

[Notarial Seal]

M. A. LANGHORNE,

Notary Public in and for the State of Washington,

Residing at Tacoma. [57]

Exhibit "A."

**THE MUTUAL LIFE INSURANCE COMPANY
OF NEW YORK.**

Ordinary Life.

IN CONSIDERATION of the annual premium of One Hundred Seventy-nine and 20/100 Dollars, the receipt of which is hereby acknowledged, and of the payment of a like amount upon each Fifteenth day of July hereafter until the death of the Insured,

PROMISES to pay at the Home Office of the Company in the City of New York upon receipt at said Home Office of due proof of the death of

Frederick L. Stewart,

of Kelso, County of Cowlitz, State of Washington, herein called the Insured,

Five Thousand Dollars

less any indebtedness hereon to the Company and any unpaid portion of the premium for the then current policy year, upon surrender of this Policy properly receipted, to his wife Maude E. Stewart, the beneficiary with the right to the INSURED TO CHANGE THE BENEFICIARY.

DEATH OF BENEFICIARY BEFORE INSURED: CHANGE OF BENEFICIARY. If any beneficiary die before the Insured, the interest of such beneficiary shall vest in the Insured, unless otherwise provided herein.

When the interest of a beneficiary shall have vested in the Insured, or when the right to change the beneficiary has been reserved, the Insured, if

there be no existing assignment of this Policy, may, while this Policy is in force, designate a new beneficiary, with or without reserving the right to change the beneficiary by filing written notice thereof at the Home Office of the Company accompanied by this Policy for suitable endorsement hereon. Such change shall take effect upon the endorsement of the same on the Policy by the Company.

PREMIUMS.—All Premiums are payable in advance at said Home Office or to any agent of the Company upon delivery, on or before date due, of a receipt signed by either the President, Vice-President, Second Vice-President, Secretary or Treasurer of the Company and countersigned by said agent.

A grace of thirty days (or one month if greater), subject to an interest charge at the rate of five per centum per annum, shall be granted for the payment of every premium after the first, during which time the insurance shall continue in force. If death occur within the period of grace, the overdue premium and the unpaid portion of the premium for the then current policy-year, if any, shall be deducted from the amount payable hereunder.

Except as herein provided the payment of a premium or instalment thereof shall not maintain this Policy in [58] force beyond the date when the next premium or instalment thereof is payable. If any premium or instalment thereof be not paid before the end of the period of grace, then this Policy shall immediately cease and become void,

and all premiums previously paid shall be forfeited to the Company except as hereinafter provided.

CONDITIONS:

RESIDENCE AND TRAVEL.—This Policy is free from any restriction as to residence and travel.

OCCUPATION.—This policy is free from any restriction as to military or naval service, and, as to other occupations of the Insured, it is free from any restriction after one year from its date of issue as set forth in the provisions of the application endorsed hereon or attached hereto.

(In Margin:)

OCCUPATION.—This Policy is free from any restriction as to Military or Naval service as well as all other occupations of the Insured after one year from its date of issue, as set forth in the provisions of the application and the “Special Provision” clause endorsed hereon or attached hereto. (This clause was substituted before issuance of the Policy for the clause in the Policy entitled “Occupation” which was deleted).

THE MUTUAL LIFE INSURANCE COMPANY OF NEW YORK,

W. J. EASTON,

Secretary.

SUICIDE.—The Company shall not be liable hereunder in the event of the Insured’s death by his own act, whether sane or insane, during the period of one year after the date of issue of this Policy as set forth in the provisions of the application endorsed hereon or attached hereto.

INCONTESTABILITY.—This Policy shall be incontestable, except for non-payment of premiums, provided two years shall have elapsed from its date of issue.

This Policy and the application herefor, copy of which is endorsed hereon or attached hereto, constitute the entire contract between the parties hereto. All statements made by the Insured shall, in the absence of fraud, be deemed representations and not warranties, and no such statement of the Insured shall avoid or be used in defence to a claim under this Policy unless contained in the written application herefor and a copy of the application is endorsed on or attached to this Policy when issued.

If the age of the Insured has been misstated, the amount payable hereunder shall be such as the premium paid would have purchased at the correct age.

(At bottom of Page 1.)

Amount of		
insurance	Premiums payable	Annual
payable at death	during life	Dividends
[59]		

“Exhibit B.”

ORDINARY LIFE
THE MUTUAL LIFE INSURANCE COMPANY
OF NEW YORK.

Number
2244868

IN CONSIDERATION of the annual premium of One Hundred Seventy-nine and 20/100 Dollars, the receipt of which is hereby acknowledged, and of the payment of a like amount upon each Twenty-eighth day of July, hereafter until the death of the Insured,

Amount
\$5000.

PROMISES TO PAY at the Home Office of the Company in the City of New York upon receipt at said Home Office of due proof of the death of

Age
42

FREDERICK L. STEWART,
of Kelso, County of Cowlitz, State of Washington,
herein called the Insured,

Annual
Premium
\$179.20

FIVE THOUSAND DOLLARS

less any indebtedness hereon to the Company and any unpaid portion of the premium for the then current policy-year, upon surrender of this Policy properly receipted to his wife, Maude E. Stewart, the beneficiary, with the right to the insured to change the beneficiary.

DEATH OF BENEFICIARY BEFORE INSURED: CHANGE OF BENEFICIARY. If any beneficiary die before the Insured, the interest of such beneficiary shall vest in the Insured, unless otherwise provided herein.

When the interest of a beneficiary shall have vested in the Insured, or when the right to change

the beneficiary has been reserved, the Insured, if there be no existing assignment of this Policy may, while this Policy is in force, designate a new beneficiary, with or without reserving the right to change the beneficiary, by filing written notice thereof at the Home Office of the Company accompanied by this Policy for suitable endorsement hereon. Such change shall take effect upon the endorsement of the same on the Policy by the Company.

PREMIUMS. All premiums are payable in advance at said Home Office or to any agent of the Company upon delivery, on or before date due, of a receipt signed by either the President, Vice-President, Second Vice-President, Secretary or Treasurer of the Company and countersigned by said agent.

A grace of thirty days (or one month if greater), subject to an interest charge at the rate of five per centum per annum, shall be granted for the payment of every premium after the first, during which time the insurance shall continue in force. If death occur within the period of grace, the overdue premium and the unpaid portion of the premium for the then current policy-year, if any, shall be deducted from the amount payable hereunder.

Except as herein provided the payment of a premium or instalment thereof shall not maintain this Policy in force beyond the date when the next premium or instalment thereof is payable. If any premium or instalment thereof be not paid before

the end of the period of grace, [73] then this Policy shall immediately cease and become void, and all premiums previously paid shall be forfeited to the Company except as hereinafter provided.

CONDITIONS:

Residence & Travel. This Policy is free from any restriction as to residence and travel.

Occupation.—This Policy is free from any restriction as to military or naval service, and as to other occupations of the insured, it is free from any restriction after one year from its date of issue, as set forth in the provisions of the application endorsed hereon or attached hereto.

(In margin:) **OCCUPATION.**—This Policy is free from any restriction as to military or naval service as well as all other occupations of the Insured after one year from its date of issue, as set forth in the provisions of the application and the “Special Provisions” clause endorsed hereon or attached hereto. (This clause was substituted before issuance of the Policy for the clause in the Policy entitled “Occupation” which was deleted.)

THE MUTUAL LIFE INSURANCE COMPANY OF NEW YORK.

W. J. EASTON,
Secretary.

SUICIDE. The Company shall not be liable hereunder in the event of the Insured’s death by his own act, whether sane or insane, during the period of one year after the date of issue of this policy, as set forth in the provisions of the application endorsed hereon or attached hereto.

INCONTESTABILITY. This Policy shall be incontestable, except for non-payment of premiums, provided two years shall have elapsed from its date of issue.

This policy and the application herefor, copy of which is endorsed hereon or attached hereto, constitute the entire contract between the parties hereto. All statements made by the Insured shall, in the absence of fraud, be deemed representations and not warranties, and no such statement of the Insured shall avoid or be used in defence to a claim under this Policy unless contained in the written application herefor and a copy of the application is endorsed on or attached to this Policy when issued.

If the age of the Insured has been misstated, the amount payable hereunder shall be such as the premium paid would have purchased at the correct age.

Amount of Insurance Payable at Death. Annual Dividend Premiums Payable During Life.

(End of Page 1.)

[Indorsed]: Aug. 1, 1922. [86]

No. 3437.

Answer.

Comes now the defendant, The Mutual Life Insurance Company of New York, a corporation, and for answer to the complaint heretofore filed herein admits, alleges and denies as follows:

I.

For answer to paragraph I of said complaint this defendant says that it has no knowledge or information sufficient to form a belief as to the truth of the matters and things in said paragraph I alleged, and therefore denies the same.

II.

For answer to paragraph V of said complaint this defendant admits that Maude E. Stewart, the above-named plaintiff, is the beneficiary named in said policy of insurance, and admits that she was the wife of one Frederick L. Stewart, and admits that on the 17th day of March, 1921, the annual premium had been paid on said policy of insurance, but denies each and every other allegation in said paragraph V contained. [87]

III.

For answer to paragraph VI of said complaint this defendant denies each and every allegation therein contained.

IV.

For answer to paragraph VII of said complaint this defendant admits that it has not paid to said Maude E. Stewart the sum of Five Thousand Dollars (\$5,000.00), but denies each and every other allegation in said paragraph VII contained.

For answer to the second cause of action set forth in plaintiff's complaint this defendant admits, denies and alleges as follows:

I.

For answer to paragraph I of said second cause of action set forth in plaintiff's complaint this de-

fendant says that it has no knowledge or information sufficient to form a belief as to the truth of the matters or things in said paragraph I contained, and therefore denies the same.

II.

For answer to paragraph V of said second cause of action set forth in said complaint this defendant admits that the plaintiff, Maude E. Stewart, is the beneficiary named in the policy of insurance issued by this defendant on the 28th day of July, 1915, to one Frederick L. Stewart, and admits that said Maude E. Stewart was the wife of said Frederick L. Stewart, and admits that on the 17th day of March, 1921, the annual premium had been paid on said policy of insurance, but denies each and every other allegation in said paragraph V contained. [88]

III.

For answer to paragraph VI of said second cause of action set forth in plaintiff's complaint this defendant denies each and every allegation therein contained.

IV.

For answer to paragraph VII of the second cause of action set forth in plaintiff's complaint this defendant admits that it has not paid to the plaintiff, Maude E. Stewart, the sum of Five Thousand Dollars (\$5,000.00), but denies each and every other allegation in said paragraph contained.

WHEREFORE, this defendant having fully answered prays that it may go hence with its costs.

CHADWICK, McMICKEN, RAMSEY &
RUPP,

Attorneys for Defendant. [89]

State of Washington,
County of King,—ss.

W. A. M. Smith, being first duly sworn on oath says: That he is Manager of the Mutual Life Insurance Company of New York, a corporation, defendant above named; and makes this verification on its behalf; that he has read the foregoing Answer, knows the contents thereof and believes the same to be true.

W. A. M. SMITH.

Subscribed and sworn to before me this 8th day of September, 1921.

[Seal]

J. E. PETERSON,

Notary Public in and for the State of Washington,
Residing in Seattle.

[Endorsed]: Sept. 8, 1921. [90]

No. 3436.

Stipulation Re Consolidation of Causes.

IT IS HEREBY STIPULATED by and between H. G. Fitch and Hayden, Langhorne & Metzger, attorneys for the plaintiff, and S. A. Keenan, attorney for the defendant, as follows:

1. That a trial by jury of the above-entitled action be and the same is hereby expressly waived. That said cause shall be submitted to and tried by the Honorable E. E. Cushman, Judge of the United States District Court for the Western District of Washington, Southern Division, and that an order

may be entered and spread upon the minutes of the court waiving the trial by jury and carrying into effect this stipulation.

2. That this cause shall be consolidated with the case of Maud E. Stewart vs. Mutual Life Insurance Company of New York, a corporation, now pending in this court, and the testimony introduced by either party shall be applicable to both causes, or to either, as the case may be.

3. That if either party to this action shall feel aggrieved by the decision rendered in this cause, or in the cause of Maude E. Stewart vs. Mutual Life Insurance Company of New York, then the party so feeling herself or itself aggrieved may remove said cause to the United States [91] Circuit Court of Appeals, and for that purpose separate or joint writs of error may be sued out as the parties are advised.

Dated this 23d day of March, 1922.

H. G. FITCH and
HAYDEN, LANGHORNE & METZGER,
Attorneys for Plaintiff.

S. A. KEENAN,
STEPHEN V. CAREY,
Attorneys for Defendant.

[Endorsed]: Mar. 27, 1922. [92]

No. 3437.

Stipulation Re Consolidation of Causes.

IT IS HEREBY STIPULATED by and between H. G. Fitch and Hayden, Langhorne & Metzger, attorneys for the plaintiff, and Chadwick, McMicken,

Ramsey & Rupp, attorneys for the defendant, as follows:

1. That a trial by jury of the above-entitled action be and the same is hereby expressly waived. That said cause shall be submitted to and tried by the Honorable E. E. Cushman, Judge of the United States District Court for the Western District of Washington, Southern Division, and that an order may be entered and spread upon the minutes of the court waiving the trial by jury and carrying into effect this stipulation.

2. That this cause shall be consolidated with the case of Maude E. Stewart vs. Prudential Insurance Company of America, a corporation, now pending in this court, and the testimony introduced by either party shall be applicable to both causes, or to either, as the case may be.

3. That if either party to this action shall feel aggrieved by the decision rendered in this case, or in the case of Maude E. Stewart vs. Prudential Insurance Company of America, then the party so feeling herself or itself aggrieved, may remove said cause to the United States Circuit Court of Appeals, and for that purpose separate or joint writ of error may be sued out as the parties are advised.

Dated this 23d day of March, 1922.

H. G. FITCH and
HAYDEN, LANGHORNE & METZGER,
Attorneys for Plaintiff.

CHADWICK, McMICKEN, RAMSEY &
RUPP,

Attorneys for Defendant. [93]

[Endorsed]: Mar. 24, 1922. [94]

No. 3436.

Order of Consolidation.

The parties in this action, by their respective attorneys having stipulated to waive a trial by jury, and to consolidate this cause with a certain cause now pending in this court, wherein the above-named plaintiff is plaintiff and the Mutual Life Insurance Company is defendant, and hear both cases at the same time upon such testimony as may be applicable to either;

IT IS NOW ORDERED that said causes be and they are hereby consolidated for the purpose of trial.

Dated this 4th day of April, 1922.

EDWARD E. CUSHMAN,
Judge.

[Endorsed]: Apr. 4, 1922. [95]

No. 3437.

Order of Consolidation.

The parties in this action, by their respective attorneys, having stipulated to waive a trial by jury and to consolidate this cause with a certain cause now pending in this court, wherein the above-named plaintiff is plaintiff and the Prudential Insurance Company of America is defendant, and hear both cases at the same time upon such testimony as may be applicable to either:

IT IS NOW ORDERED that said cases be and they are hereby consolidated for the purposes of trial.

Dated this 4th day of April, 1922.

EDWARD E. CUSHMAN,

[Endorsed]: Apr. 4, 1922. [96]

No. 3436.

Notice to Produce Certain Evidence.

To Prudential Insurance Company of America, and
to S. A. Keenan and Stephen V. Carey, their
Attorneys:

YOU ARE HEREBY notified and required to
produce upon the trial of the above-entitled action,
in addition to the original documents, evidence and
letters called for in a former notice, the following:

1. The original letters written by H. G. Fitch
to the Prudential Insurance Company under the
date of May 13, 192.

2. Original letter of July 14, 1921, written by
Hayden, Langhorne & Metzger, attorneys for plain-
tiff, to the Prudential Insurance Company of Amer-
ica at Newark, New Jersey, the receipt of each of
said letters being acknowledged under date of
July 20, 1921, by said company.

And in the event of your failure or refusal to
produce the originals of the letters so called for,
plaintiff will offer secondary evidence as to the con-
tents of the same.

Dated March 28th, 1922.

H. G. FITCH and

HAYDEN, LANGHORNE & METZGER,

Attorneys for Plaintiff.

[Endorsed]: Mar. 31, 1922. [97]

No. 3437.

Notice to Produce Certain Evidence.

To the Mutual Life Insurance Company of New York, a Corporation, Defendant, and to Chadwick, McMicken, Ramsey & Rupp, Attorneys for Defendant:

YOU ARE HEREBY REQUIRED to produce upon the trial of the above-entitled action the originals of the following documents, letters and affidavits:

1. Original letter written by F. J. Sardam under date of April 9, 1921, to Mr. W. A. M. Smith, manager of the Mutual Life Insurance Company, Stuart Bldg., Seattle, Washington, together with the original proofs of death of F. L. Stewart signed by Maude E. Stewart, the beneficiary who is plaintiff in the above-entitled action.

2. Original letter of March 23, 1921, written by F. J. Sardam to Mutual Life Insurance Company, New York City, New York, on behalf of Maude E. Stewart, the beneficiary under policies No. 2242058 and 2244868, issued by the said Mutual Life Insurance Company on the life of Frederick L. Stewart.

3. Original affidavit of Maude E. Stewart, the beneficiary under policy No. 2242058, which affidavit was sent to defendant under the date of May 13, 1921; also original letter of H. G. Fitch, enclosing said affidavit. [98]

4. Original affidavit of Maude E. Stewart, the beneficiary under policy No. 2244868, which affidavit

was sent to defendant under date of May 13, 1921, also original letter of H. G. Fitch, enclosing said affidavit.

5. Original affidavit of Paul G. Shotswell, sent to Mutual Life Insurance Company, the defendant, on July 13, 1921, and original letter of Hayden, Langhorne & Metzger, written under date of July 13, 1921, accompanying the affidavit of the said Shotswell.

In the event that you should fail to produce the originals of the documents, letters and affidavits herein called for plaintiff will offer secondary evidence as to the contents of the same.

H. G. FITCH and
HAYDEN, LANGHORNE & METZGER,
Attorneys for Plaintiff.
[Endorsed]: Mar. 4, 1922. [99]

Decisions of the Court.

The COURT.—I think I am as well prepared to decide this case now as I would be if I should take such odd times as I can take from other work to peruse the depositions and study the record in the case further, and that is all that I would be able to do if I did not decide it now. It might be more satisfactory to sit down and take this record and go through it thoroughly again uninterruptedly in the court's chambers or closet, but it can't be done.

Regarding the law of the case it appears to me that there is this distinction between the question

of suicide as it ordinarily comes up in these cases and in this case; In the ordinary case where suicide is considered, the presumption that a man did not kill himself, that is where his death is proven, the presumption that he died by some other means than his own hand intentionally used against himself stands out without anything to take from it, but in this case the court is asked to choose between the theory that he destroyed himself physically by his own act and the theory that he banished himself from his friends and relatives forever and became a wanderer and a tramp on the face of the earth, constantly on the alert, scanning every face for some look of recognition. You say he was a longheaded man. If he was he must have known that was the fate that awaited him if he fled.

The importance of just what was in his mind and what his circumstances were cannot be overestimated in determining just what he did and to understand the actions that witnesses have testified to testifying on his part. [100] Now the fact that he was in trouble and had been in trouble for a long time might make him a fugitive or might make him a suicide. That does not get the court or anyone else very far in determining just what he did. His conduct on that morning in parting from his family I interpret that he had not yet made up his mind to commit suicide, though he had been thinking of it. Hope is very strong in every one. After he learned at Portland or after this bank examiner or officer Hay left him there and after he learned that the bank was closed, I

think he began, in addition to his other motives, thinking of suicide, and possibly thinking of the alternative of escape, that he then began to fear arrest, whether rightly or whether he deserved arrest or whether he did not. What the court looks for is what the condition of his mind was. He probably got to thinking that is what Hay had gone back for, to close the bank and get out papers for his arrest. Therefore when he left the hotel he probably intended, just as defendant's counsel have argued, to go down the river, but he took a taxi for the Union Station so that if inquiry was made after he had left by anyone seeking his arrest they should be thrown off the scent to that extent temporarily.

If, as defendants' counsel have argued, he was seeking to act strangely and attract attention he would not have stopped outside the Union Station, out there in the dark, where the porter alone saw him. He would have paraded himself through the corridors of the station I take it. Evidently he thought there might be some one in the station he would not want to meet. He went to take the train down the river. As I conclude, possibly he had not yet made up his mind to commit suicide. A man would naturally [101] put it off as long as he could unless he was suddenly overcome with an impulse. It is not exactly clear about his conduct on that trip down the river to the court, but when you say that he was laying the foundation for his flight, but to create the impression that he committed suicide, probably a man who is going to commit suicide for the benefit of those he leaves behind

him, he may dread if he takes the step that he may be rescued when he doesn't want to be rescued, and yet he wants to make it so sure that there will be witnesses that he did kill himself that he wants to have it done under circumstances where he will not only not be immediately rescued, say he determined to drown himself, but that a sufficient number of witnesses will know that that was the only way that he could have disappeared. Therefore the fact that he did many things on the trip down to attract attention to himself weighs about as much one way as the other. That is he wanted everybody to recognize him so that each step could be traced, whichever motive was in his mind. That conduct would be about as natural in one case as the other.

His getting on the boat and his conduct from there on seems to the court the more reasonable explanation of it is that it was suicide, because whatever did happen he could not have anticipated that that is the way it would turn out. He knew he was a marked man, he knew the bank was closed, knew they were all watching him, knew or probably felt that he would be followed up, his motions on the boat. Shotswell who collected his fare did not collect it when he collected it from others and he stood there watching him. So when he went out the rear of the boat he would feel that [102] *that* he probably would be followed within a half a minute; he could not know he would not immediately be followed out there and could hang on the side of the boat in perfect security, that no one was thinking of him and no one on the boat had him in

the least in their minds. He must have felt they were all thinking about him more or less, whether they were or not.

This conduct such as his has been studied by dramatists and novelists and I think that his reasoning, his emotions and his actions probably pictured by that of Oily Gammon and John Carker, and this writing of letters and making appointments and having his car fixed, arranging for it in Portland, and all those thingse are old symptoms and actions of men who are contemplating destroying themselves. If he contemplated flight to southern California he never would have mentioned his wife going to his father in California and he never would have talked with the garage man about his taking a trip to California. If he was going to run the other way he might have done so. The court cannot conceive that a man as well known as he apparently was and living as near Portland as he did would ever flee from Kalama and take that night train for California. It might happen three times out of four that he would not see anybody on that train that he would know, but he would feel that every train that he got on between Portland and California would be full of people he would know.

Again the use by him, if he contemplated flight, of a life-preserver, if he had any confederate, and the court finds nothing in this case to justify a suspicion that he [103] could have had a confederate, things moved so fast from the time that Hay came, the night before. When he went to Portland,

as I have found, he still was strong in hope that he might get through, and therefore I cannot find any opportunity for confederation or any—not opportunity, but any incentive to be formulating a plot to build up a suicide theory at Kalama. That is before he went to Portland. If in the afternoon at Portland such a thing came into his mind, how is the Court to find anything to base a conclusion on that he had the opportunity to do it. He could not with five men on the boat and he knew not how many at the landing, a lighted landing, what hope—whether he did in fact go up there without anybody seeing him, he could not hope to do so; he could not know in his own mind that it would turn out that way. If he was tortured with a fear of discovery, why, he would think that everybody was looking for him and many people down there that he would have to run the gauntlet of as he went up that slip.

About the men Mr. Shotswell and Mr. Reid, the Court concludes that in the flight of time, talking about this many times and thinking about it many times, this man that they testified to having gone over across the tracks there between them each one probably saw the other and what they think they recollect about that is either Mr. Shotswell has confused Mr. Reid with that man that went up there or with some of the others who followed later. What leads me to that conclusion is this: that it was very apparent that Mr. Shotswell wanted to get that man as far from him as he could down toward Mr. Reid and Mr. Reid seemed equally inclined to get him up as close to Shotswell as he could. [104]

Mr. LANGHORNE.—Chisholm.

The COURT.—Chisholm, yes. Mr. Reid had him almost up there going across where Chisholm went across and Mr. Chisholm had him almost back as far as Reid was standing. This matter of the automobile, this court has tried so many cases where there were automobiles acting strangely down in that country for other reasons than people running away that were insured that, even if that automobile was acting strangely, the Court does not associate it particularly with Mr. Stewart.

There is more difficulty so far as the court is concerned with the fact that the body is not recovered and Mr. Elwood. Is that the man's name?

Mr. KEENAN.—Yes.

The COURT.—But his body was not recovered and other bodies have not been recovered. If he was building up a proposition that he wanted to leave the impression that he had drowned himself when he hadn't—men often leave their clothes on the bank of the river or hat or something—it would not have been very difficult for Mr. Stewart to have provided himself with some package that would have floated that might have been found, if he was a very longheaded man.

Regarding Mr. Elwood's testimony, aside from the fact that I have pointed out that one of the last things in the world Mr. Stewart would have done is to have taken immediately a train for California, is this: What he would necessarily had to have done to have reached Hanford by the 20th. It was physically possible, but undoubtedly the rail-

road men on the train that he must have taken would [105] have seen him, if he had tried to hide in a stateroom so that he would not see anybody that he might know the porters on the train would have remembered it, and if he did move freely about the train others he probably knew would have seen him. The Court concludes that Mr. Elwood did see somebody at Hanford on the 20th that he thought was Stewart. Why I think it was the 20th is this: that Mr. Elwood said it was the 22d of February; he said it was a holiday, when the restaurants and barber shops were open. Well, the 20th, as I looked at the calendar, appeared to be Sunday and probably there would be only a few places open on Sunday. But all of these witnesses that have seen men that they thought—testified was Fred Stewart—It must be true that in everyone's life they have had experience when they mistook one person for another, but what I presume people in thinking about cases of mistaken identity do not sufficiently take into account is this: That you pass a person on the street and you are mistaken about who he is. There is nothing to call to your attention ordinarily the fact that you are mistaken. You go on thinking that he is the man you met. In the humdrum ordinary existence of an individual nothing comes to view to correct your mistake. Therefore out of all the people on the Pacific Coast, when a man that was well known, prominently known, to many people, suddenly disappears it is not at all extraordinary that within the course of several months among the people who knew him may be

found people that thought they had seen him after the event, that is taking into account the fact that the event that has disappeared has not been called to their attention [106] until after the time that they thought they saw him. In such case as that the proof, to overcome this well-known fact or facts that when thought about must be realized, would have to be a much more positive identification than anything that has occurred in this case. People seeing one another in passing automobiles or seeing one pass in an automobile or seeing one on a sidewalk when they are riding by in an automobile certainly falls far short of what is necessary. And the man who claims to have met him on the sidewalk he did not speak to him. The very fact that he did not speak to a man whom he knew, meeting him away from home, goes a long way to convince the court that the recognition dwells more in memory than was actual at the time.

From his conduct on the boat it appears to me that he had not probably until the last moment made up his mind to actually commit suicide. I do not need to be told that he did not sleep the night before and he had been driving hard all day, while he was in Portland trying to find a way out, and then when Hay left him going on with his writing and other activities, and getting on the train and that did not go fast enough and getting an automobile and driving that, and probably the first time he slowed up or tried to slow up was after he got on the bow of that boat, and he could not do it.

Judgment for plaintiff.

Mr. RUPP.—In order that the record may be kept correct, you deny my motion to dismiss, I except and you allow an exception.

The COURT.—Motion denied and exception allowed. [107]

No. 3436.

**Findings of Fact and Conclusions of Law Proposed
by Defendant.**

The above-entitled cause came on regularly for trial on April 4, 1922, before the undersigned judge of the United States District Court, for the Western District of Washington, a trial by jury having been waived by written stipulation of the parties, the same being filed in this cause, plaintiff appearing in person and by her attorneys H. G. Fitch, Hayden, Langhorne & Metzger, and the defendant appearing by S. A. Keenan, one of its counsel, and all things being regularly the trial of said cause was continued from day to day until its completion April 11, 1922, and after duly considering all the evidence offered and the argument of respective counsel the court makes the following:

FINDINGS OF FACT.

I.

That at the time of the commencement of this action and at all times since, and for some years prior thereto, the plaintiff, Maude E. Stewart, was a citizen of the State of [108] Washington, residing at Kelso, Cowlitz County, within the Southern

Division of the Western District of the State of Washington.

II.

That on and prior to the 17th day of April, 1917, the defendant, The Prudential Insurance Company of America, was and is now a corporation duly organized and existing under and by virtue of the laws of the state of New Jersey, and was and is a resident and citizen of that state. And on the date last above mentioned and at all times since, has been admitted to do business in the state of Washington, having complied with the laws of the state of Washington, relative to foreign corporations transacting business therein.

III.

That the matter and amount in the above-entitled action exceed, exclusive of costs and interest, the sum or value of \$3,000.

IV.

The Court finds that the insurance policies, as set out in the pleadings of this case, were duly and regularly issued, and in full force and effect, on March 17, 1921.

V.

The Court finds that the plaintiff failed to furnish defendant with due and sufficient, or any other proof of the death of the insured prior to the commencement of this action.

VI.

The Court finds that the plaintiff has wholly failed to establish the death of the insured named in said policies or either of them. [109]

From the foregoing findings of fact the Court makes the following:

CONCLUSIONS OF LAW.

I.

That said action was prematurely brought upon the ground and for the reason that defendant was not furnished with sufficient, or any, proof of the death of the insured prior to the bringing of this action.

II.

That defendant is entitled to a judgment of dismissal with prejudice for the reason and upon the ground that plaintiff has wholly failed to establish by evidence the death of said insured.

Done in open court this 24th day of April, 1922, at the city of Tacoma, Washington.

Judge.

The foregoing proposed findings of fact and conclusions of law were duly presented to, and considered by, the court prior to the signing of the findings of fact and conclusions of law in favor of the plaintiff. Defendant's counsel at the time duly excepted to the court's refusal to adopt the proposed findings in favor of the defendant and an exception to said ruling is hereby allowed the defendant.

EDWARD E. CUSHMAN,

Judge.

[Indorsed]: Apr. 24, 1922. [110]

No. 3437.

**Findings of Fact and Conclusions of Law Proposed
by Defendant.**

The above-entitled cause came on regularly for trial on April 4, 1922, before the undersigned judge of the United States District Court for the Western District of Washington, a trial by jury having been waived by written stipulation of the parties, the same being filed in this cause, plaintiff appearing in person and by her attorneys, H. G. Fitch, Hayden, Langhorne & Metzger, and the defendant appearing by Chadwick, McMicken, Ramsey & Rupp, its counsel, and all things being regular, the trial of said cause was continued from day to day until its completion on the 11th day of April, 1922, and after duly considering all the evidence offered and the argument of respective counsel the Court makes the following

FINDINGS OF FACT.**I.**

That at the time of the commencement of this action and at all times since and for some years prior thereto the plaintiff, Maude E. Stewart, was a citizen of the State of Washington residing at Kelso, Cowlitz County within the southern division of the Western District of the State of [111] Washington.

II.

That on and prior to the 17th day of April, 1917, the defendant, The Mutual Life Insurance Company of New York was and is now a corporation

duly organized and existing under and by virtue of the laws of the State of New York, and was and is a resident and citizen of that State. And on the date last above mentioned and at all times since, has been admitted to do business in the State of Washington, having complied with the laws of the State of Washington relative to foreign corporations transacting business therein.

III.

That the matter and amount in the above-entitled action exceed, exclusive of costs and interest, the sum or value of three thousand dollars (\$3,000.00).

IV.

The Courts find that the insurance policies, as set out in the pleadings of this case, were duly and regularly issued and in full force and effect, on March 17, 1921.

V.

The Court finds that the plaintiff failed to furnish defendant with due proof of the death of the insured prior to the commencement of this action.

VI.

The Court finds that the plaintiff has wholly failed to establish the death of the insured named in said policies or either of them.

From the foregoing findings of fact the Court makes [112] the following

CONCLUSIONS OF LAW.

I.

That said action was prematurely brought upon the ground and for the reason that defendant was

not furnished with due proof of the death of the insured prior to the bringing of this action.

II.

That defendant is entitled to a judgment of dismissal with prejudice for the reason and upon the ground that plaintiff has wholly failed to establish by evidence the death of said insured.

Done in open court this 24th day of April, 1922,
at the City of Tacoma, Washington.

Judge.

The foregoing proposed findings of fact and conclusions of law were duly presented to and considered by the Court prior to the signing of the findings of fact and conclusions of law in favor of the plaintiff. Defendant's counsel at the time duly excepted to the court's refusal to adopt the proposed findings in favor of the defendant and an exception to said ruling is hereby allowed the defendant.

EDWARD E. CUSHMAN,

Judge. [113]

[Endorsed]: Apr. 24, 1922. [114]

No. 3436.

Findings of Fact and Conclusions of Law.

Came on this cause to be heard on April 4, 1922, before the undersigned Judge of the United States District Court for the Western District of Washington, a trial by jury having been waived by stipu-

lation of the parties, which stipulation was filed among the records of this action, the plaintiff appearing in person and by her attorneys H. G. Fitch and Hayden, Langhorne & Metzger, and the defendant appearing by S. A. Keenan, Esq., its attorney.

Testimony both oral and documentary was introduced by the respective parties and the trial of said cause was continued from day to day until April 11, 1922, when the testimony was closed and the case was argued by respective counsel, and the Court being at the time fully advised in the premises, DOTH ORDER judgment for the plaintiff for the full amount sued for in the complaint, and hereby makes and files the following

FINDINGS OF FACT.

That at the time of the commencement of this action [115] and at all times since, and for some years prior thereto, the plaintiff Maude E. Stewart was a citizen of the State of Washington, residing at Kelso, Cowlitz County, within the Southern Division of the Western District of the State of Washington.

II.

That on and prior to the 17th day of April, 1917, the defendants The Prudential Insurance Company of America, was and is now a corporation duly organized and existing under and by virtue of the laws of the State of New Jersey, and was and is a resident and citizen of that state. And on the date last above mentioned and at all times since, has been admitted to do business in the state of Washington, having complied with the laws of the state of Wash-

ington relative to foreign corporations transacting business therein.

III.

That the matter and amount in the above-entitled action exceed, exclusive of costs and interest, the sum or value of \$3,000.

IV.

I find that on the 17th day of April, 1917, the defendant, The Prudential Insurance Company of America, an insurance corporation, in consideration of an annual premium of \$749.50, paid to it by Frederick L. Stewart, then a resident of Kelso, Cowlitz County, Washington, made, executed and delivered to the said Frederick L. Stewart their certain policy of insurance, a copy of which is annexed to the complaint and marked Exhibit "A," the original of which was offered and received in evidence on the trial of this action and marked Plaintiff's Exhibit —, wherein and whereby the said The Prudential Insurance Company of America, a corporation, [116] as aforesaid, promised and agreed that it would upon receipt of due proof of the death of the said Frederick L. Stewart during the continuance of the policy so issued, pay to Maude E. Stewart, the beneficiary named therein, who was then the wife of the insured, the sum of \$25,000.

V.

I find that on the 17th day of March, 1921, the policy so issued by the defendant The Prudential Insurance Company of America to the said Frederick L. Stewart, was in full force and effect, the

last annual premium having been paid thereon and accepted by the company and a receipt issued therefor.

VI.

That on the 17th day of August, 1915, the defendant The Prudential Insurance Company of America, in consideration of an annual premium of \$138.95, paid to it by Frederick L. Stewart, then of Kelso, Cowlitz County, Washington, made, executed and delivered their certain policy of insurance in writing of which a copy is annexed to the complaint filed herein, marked Exhibit "B," the original of which was introduced upon the trial of this action, marked Plaintiff's Exhibit —, wherein and whereby it insured the life of the said Frederick L. Stewart in the sum of \$5,000 and agreed, in the event of the death and upon receipt of due proof thereof during the continuance of the policy, to pay to Maude E. Stewart, the beneficiary, then the wife of the insured, the sum of \$5,000.

VII.

That on the 17th day of March, 1921, the last described policy of insurance so issued by The Prudential Insurance Company of America, in the sum of \$5,000 on the [117] life of the said Frederick L. Stewart, was in full force and effect, the last annual premium having been paid thereon, the amount thereof received by the company and a receipt issued therefor.

VIII.

The Court finds that on the 7th day of August, 1916, the defendants The Prudential Insurance

Company of America, a corporation, in consideration of an annual premium of \$144.25, paid to it by Frederick L. Stewart, then a resident of Kelso, Cowlitz County, Washington, made, executed and delivered to him its certain policy of insurance, a copy of which is attached to the complaint filed in this action, marked Exhibit "C," the original of which was offered and received in evidence upon the trial of this action, wherein and whereby said defendant The Prudential Insurance Company of America, a corporation, insured the life of the said Frederick L. Stewart in the sum of \$5,000, and agreed to pay that amount to Maude E. Stewart, then the wife of the said Frederick L. Stewart, upon receipt of due proof of the death of the insured during the continuance of the policy.

IX.

That on the 17th day of March, 1921, said policy of insurance described in the foregoing finding was in full force and effect, the last annual premium having been paid thereon, the amount having been received by the company and a receipt issued therefor.

X.

The Court finds that on the 17th day of March, 1921, between the hour of 8:50 and 9:15 P. M. of said day, the said Frederick L. Stewart met his death by being drowned in the waters of the Columbia River. [118]

XI.

That thereafter the plaintiff in this action, being the beneficiary named in the three policies of insur-

ance so issued by the defendant The Prudential Insurance Company of America on the life of the said Frederick L. Stewart, made due proof of the death of Frederick L. Stewart, the insured, and sent said proofs to the Home Office of The Prudential Insurance Company of America, a corporation, the defendant, at its Home Office in Newark, New Jersey. That the proofs of death so submitted by the said plaintiff to the defendant concerning the death of the said Frederick L. Stewart were sufficient to enable the said defendant to consider its rights and liabilities. That the last affidavit submitted by the plaintiff in support of her claim of the death of the said Frederick L. Stewart was received by the defendant at its Home Office in Newark, New Jersey, on the 12th day of June, 1921.

XII.

That the said defendant The Prudential Insurance Company of America, a corporation, thereafter denied that the said Frederick L. Stewart was dead and by its answer filed herein, joined issue with the plaintiff on the allegation concerning the death of the said Frederick L. Stewart.

From the foregoing findings the Court hereby makes and adopts the following

CONCLUSIONS OF LAW.

I.

That the Court has full and complete jurisdiction of the parties and of the subject matter of this action. [119]

II.

That the plaintiff is entitled to a judgment

against the defendant The Prudential Insurance Company of America, a corporation, in the sum of \$35,000, together with interest thereon at the rate of six per cent per annum from and after June 12, 1921.

III.

That the plaintiff is also entitled to a judgment for her costs and disbursements expended in this action, which will be taxed in the manner provided for by law.

Done in open court this 24th day of April, 1922.

EDWARD E. CUSHMAN,
Judge.

[Endorsed]: Apr. 24, 1922. [120]

No. 3437.

Findings of Fact and Conclusions of Law.

Came on this cause to be heard on April 4, 1922, before the undersigned Judge of the United States District Court for the Western District of Washington, a trial by jury having been waived by stipulation of the parties, which stipulation was filed among the records of this action, the plaintiff appearing in person and by her attorneys H. G. Fitch and Hayden, Langhorne & Metzger, and the defendant appearing by Chadwick, McMicken, Ramsey & Rupp, its attorneys.

Testimony both oral and documentary was introduced by the respective parties and the trial of said cause was continued from day to day until April 11,

1922, when the testimony was closed and the case was argued by respective counsel, and the court being at the time fully advised in the premises, DOTH ORDER judgment for the plaintiff for the full amount sued for in the complaint, and hereby makes and files the following

FINDINGS OF FACT.

I.

That at the time of the commencement of this action and at all times since, and for some years prior thereto, [121] the plaintiff Maude E. Stewart was a citizen of the State of Washington, residing at Kelso, Cowlitz County, within the Southern Division of the Western District of the State of Washington.

II.

That on and prior to the 15th day of July, 1915, the defendant The Mutual Life Insurance Company of New York was and is now a corporation duly organized and existing under and by virtue of the laws of the state of New York, and was and is a resident and citizen of that state. And on the date last above mentioned and at all times since, has been admitted to do business in the state of Washington, having complied with the laws of the state of Washington relative to foreign corporations transacting business therein.

III.

That the matter and amount in the above entitled action exceed, exclusive of costs and interest, the sum or value of \$3,000.

IV.

I find that on the 15th day of July, 1915, the defendant The Mutual Life Insurance Company of New York, an insurance corporation, in consideration of an annual premium of \$179.20, paid to it by Frederick L. Stewart, then a resident of Kelso, Cowlitz County, Washington, made, executed and delivered to the said Frederick L. Stewart their certain policy of insurance, a copy of which is annexed to the complaint and marked Exhibit "A," the original of which was offered and received in evidence on the trial of this action and marked Plaintiff's Exhibit —, wherein and whereby the said The Mutual Life Insurance Company of New York, a corporation [122] as aforesaid, promised and agreed that it would upon receipt of due proof of the death of the said Frederick L. Stewart during the continuance of the policy so issued, pay to Maude E. Stewart, the beneficiary named therein, who was then the wife of the insured, the sum of \$5,000.

V.

I find that on the 17th day of March, 1921, the policy so issued by the defendant The Mutual Life Insurance Company of New York to the said Frederick L. Stewart, was in full force and effect, the last annual premium having been paid thereon and accepted by the company and a receipt issued therefor.

VI.

That on the 28th day of July, 1915, the defendant The Mutual Life Insurance Company of New York,

in consideration of an annual premium of \$179.20, paid to it by Frederick L. Stewart, then of Kelso, Cowlitz County, Washington, made, executed and delivered their certain policy of insurance in writing, of which a copy is annexed to the complaint filed herein, marked Exhibit "B," the original of which was introduced upon the trial of this action, marked Plaintiff's Exhibit —, wherein and whereby it insured the life of the said Frederick L. Stewart in the sum of \$5,000 and agreed, in the event of the death and upon receipt of due proof thereof during the continuance of the policy, to pay to Maude E. Stewart, the beneficiary, then the wife of the insured, the sum of \$5,000.

VII.

That on the 17th day of March, 1921, the last described policy of insurance so issued by The Mutual Life Insurance Company of America, in the sum of \$5,000 on the life of the said Frederick L. Stewart, was in full force [123] and effect, the last annual premium having been paid thereon, the amount thereof received by the company and a receipt issued therefor.

VIII.

The Court finds that on the 17th day of March, 1921, between the hour of 8:50 and 9:15 P. M. of said day, the said Frederick L. Stewart met his death by being drowned in the waters of the Columbia River.

IX.

That thereafter the plaintiff in this action, being the beneficiary named in the two policies of in-

surance so issued by the defendant The Mutual Life Insurance Company of America on the life of the said Frederick L. Stewart, made due proof of the death of Frederick L. Stewart, the insured, and sent said proofs to the Home Office of The Mutual Life Insurance Company of New York, a corporation, the defendant, at its Home Office in the City of New York, and State of New York. That the proofs of death so submitted by the said plaintiff to the defendant concerning the death of the said Frederick L. Stewart were sufficient to enable the said defendant to consider its rights and liabilities. That the last affidavit submitted by the plaintiff in support of her claim of the death of the said Frederick L. Stewart was received by the defendant at its Home Office in New York, New York, on the 13th day of June, 1921.

XII.

That the said defendant The Mutual Life Insurance Company of New York, a corporation, thereafter denied that the said Frederick L. Stewart was dead and by its answer filed herein, joined issue with the plaintiff on the allegation concerning the death of the said Frederick L. Stewart. [124]

From the foregoing findings of fact the Court hereby makes and adopts the following

CONCLUSIONS OF LAW.

I.

That the court has full and complete jurisdiction of the parties and of the subject matter of this action.

II.

That the plaintiff is entitled to a judgment against the defendant The Mutual Life Insurance Company of New York, a corporation, in the sum of \$10,000 together with interest thereon at the rate of six per cent per annum from and after June 12, 1921.

III.

That the plaintiff is also entitled to a judgment for her costs and disbursements expended in this action, which will be taxed in the manner provided for by law.

Done in open court this 24th day of April, 1922.

EDWARD E. CUSHMAN,
Judge.

[Endorsed]: Apr. 24, 1922. [125]

No. 3436.

**Exceptions to Plaintiff's Proposed Findings of
Fact and Conclusions of Law.**

I.

Defendant excepts to finding of fact 10, upon the ground and for the reason that there is no evidence to the support of said findings.

II.

Defendant excepts to finding of fact 11, upon the ground and for the reason that due and sufficient proof of death was never furnished to the defendant under the terms and conditions of either of the said policies mentioned in said findings of fact.

III.

Defendant excepts to each and all of said findings

which find that the defendant is liable to plaintiff in any manner whatsoever under the terms and conditions of said policies or any of them.

IV.

Defendant excepts to conclusions of law 2. [126]

V.

Defendant excepts to Conclusion of Law 3.

Dated at Seattle, Washington, this 24th day of April, 1922.

S. A. KEENAN,

S. V. CAREY,

Attorneys for Defendant.

The foregoing exceptions to the findings of fact and conclusions of law were duly and regularly presented to the court, prior to the adoption of the findings and conclusions filed in this case. Said exceptions are disallowed and the defendant at the time is allowed an exception.

Dated at Tacoma, Washington, April 24, 1922.

EDWARD E. CUSHMAN,

Judge.

[Indorsed]: Apr. 24, 1922. [127]

No. 3437.

Exceptions to Plaintiff's Proposed Findings of Fact and Conclusions of Law.

I.

Defendant excepts to finding of fact 8 upon the ground and for the reason that there is no evidence to support said finding.

II.

Defendant excepts to finding of fact 9 upon the ground and for the reason that due proof of death was never furnished to the defendant under the terms and conditions of either of the said policies mentioned in said findings of fact.

III.

Defendant excepts to conclusion of law No. 2.

IV.

Defendant excepts to conclusion of Law 3.

Dated at Tacoma, Washington this 24 day of April, 1922.

CHADWICK, McMICKEN, RAMSEY &
RUPP,

Attorneys for Defendant. [128]

The foregoing exceptions to the findings of fact and Conclusions of Law were duly and regularly presented to the Court, prior to the adoption of the Findings and Conclusions filed in this case. Said exceptions are disallowed and the defendant at the time is allowed an exception.

Dated at Tacoma, Washington, April 24th, 1922.

EDWARD E. CUSHMAN,
Judge.

[Endorsed]: Apr. 24, 1922. [129]

No. 3436.

Judgment.

This cause having been brought on for trial on the 4th day of April, 1922, before the under-

signed United States District Judge for the Western District of Washington, a trial by jury having been waived by stipulation duly signed by respective counsel, which stipulation is filed among the records of this action, the plaintiff appearing in person and by her attorneys H. G. Fitch and Hayden, Langhorne & Metzger, the defendant appearing by its attorney S. A. Keenan.

After the introduction of testimony, both oral and documentary on behalf of both parties, the hearing of said cause was concluded on the 11th day of April, 1922, and the Court having made and filed its findings of fact and conclusions of law, from all of which it appears that the plaintiff is entitled to a judgment against the defendant, The Prudential Insurance Company, in the sum of \$35,000, together with interest thereon at the rate of six per cent per annum from the 12th day of June, 1921, and to her costs and disbursements of this action. [130]

WHEREFORE, by reason of the law in the premises,

IT IS NOW ORDERED, ADJUDGED AND DECREED, and this does ORDER, ADJUDGE AND DECREE, that the plaintiff be and she is hereby awarded a judgment against the said defendant, The Prudential Insurance Company of America, a corporation, in the sum of \$35,000, together with interest thereon at the rate of six per cent per annum from the 12th day of June, 1921, and to her taxable costs and disbursements of this action, and that execution issue therefor.

To the foregoing judgment and to the whole thereof the defendant at the time excepted and its exception is hereby allowed and noted of record.

Done in open court this 24th day of April, 1922.

EDWARD E. CUSHMAN,

Judge.

[Endorsed]: Apr. 24, 1922. [131]

No. 3437.

Judgment.

This cause having been brought on for trial on the 4th day of April, 1922, before the undersigned United States District Judge for the Western District of Washington, a trial by jury having been waived by stipulation duly signed by respective counsel, which stipulation is filed among the records of this action, the plaintiff appearing in person and by her attorneys H. G. Fitch and Hayden, Langhorne & Metzger, the defendant appearing by its attorneys Chadwick, McMicken, Ramsey & Rupp;

After the introduction of testimony, both oral and documentary on behalf of both parties, the hearing of said cause was concluded on the 11th day of April, 1922, and the court having made and filed its findings of fact and conclusions of law, from all of which it appears that the plaintiff is entitled to a judgment against the defendant The Mutual Life Insurance Company of New York, in the sum of \$10,000, together with interest thereon at the rate of six per cent per annum from the 12th day of

June, 1921, and to her costs and disbursements of this action,

WHEREFORE, by reason of the law in the premises,

IT IS NOW ORDERED, ADJUDGED AND DECREED, and this [132] does ORDER, ADJUDGE AND DECREE that the plaintiff be and she is hereby awarded a judgment against the said defendant The Mutual Life Insurance Company of New York, a corporation, in the sum of \$10,000, together with interest thereon at the rate of six per cent per annum from the 10th day of July, 1921, and to her taxable costs and disbursements of this action, and that execution issue therefor.

To the foregoing judgment and to the whole thereof the defendant at the time excepted and its exception is hereby allowed and noted of record.

Done in open court this 24th day of April, 1922.

EDWARD E. CUSHMAN,

Judge.

Due service of the within and foregoing proposed judgment by receipt of a true copy thereof, together with true copies of the exhibits recited therein as being attached thereto, hereby is admitted in behalf of all parties entitled to such service by law or by rules of court, this 13th day of April, 1922.

CHADWICK, McMICKEN, RAMSEY
& RUPP,

Attorneys for Deft.

[Indorsed]: Apr. 24, 1922. [133]

No. 3436—No. 3437.

Stipulation Extending Time to and Including May 27, 1922, to File Bill of Exceptions.

It is hereby stipulated and agreed by and between the parties to the above-entitled action, through their respective counsel, that the time in which to file a proposed bill of exceptions, by defendants, in the above-entitled causes, may be extended up to and including the 27th day of May, 1922, during which time said defendants, if they so elect, shall file their petition for a new trial.

Dated April 12, 1922.

H. G. FITCH and
HAYDEN, LANGHORNE & METZGER,
Attorneys for Plaintiff.

S. A. KEENAN,
STEPHEN V. CAREY,
CHADWICK, McMICKEN, RAMSEY
& RUPP,
Attorneys for Defendants.

Order Extending Time to and Including May 27, 1922, to File Bill of Exceptions.

UPON READING AND CONSIDERING the foregoing stipulation it is hereby ordered that the time in which to file a proposed bill of exceptions, by defendants, in this case, as well as the time in which to file their petition for a new trial is hereby [134] enlarged and extended up to and including May 27th, 1922.

Dated at Tacoma, Washington, April 15th, 1922.

EDWARD E. CUSHMAN,

Judge.

[Indorsed]: Apr. 15, 1922. [135]

No. 3436—No. 3437.

**Stipulation Extending Time to and Including June
14, 1922, to File Bill of Exceptions.**

It is hereby stipulated and agreed by and between the parties to the above-entitled actions, through their respective counsel, that the time in which to file a proposed bill of exceptions, by defendants, in the above-entitled causes, shall be extended up to and including the 14th day of June, 1922.

Dated May 26, 1922.

H. G. FITCH and
HAYDEN, LANGHORNE & METZGER,
Attorneys for Plaintiff in Said Actions.

S. A. KEENAN,
CHADWICK, McMICKEN, RAMSEY
& RUPP,

Attorneys for Defendants in Said Actions.

[Indorsed]: May 27, 1922. [136]

No. 3436—No. 3437.

**Order Extending Time to and Including June 14,
1922, to File Bill of Exceptions.**

Upon reading and considering the stipulation of the parties to said actions this day filed herein,

it is hereby ORDERED that the time in which to file a proposed bill of exceptions by defendants in said actions, is hereby enlarged and extended up to and including June 14, 1922.

Dated at Tacoma, Washington, May 27th, 1922.

EDWARD E. CUSHMAN,
Judge.

[Indorsed]: May 27, 1922. [137]

No. 3436—No. 3437.

**Motion of Defendants for Settlement of Bill of
Exceptions.**

Come now the defendants in the above-entitled causes and move the Court that the proposed bill of exceptions agreed upon by all parties to this suit and delivered to the Clerk of this Court on June 14, 1922, for its settlement and certification, be now settled by the Court with the proper certificate thereto annexed. That said motion will be based upon all the papers and files in said cause, the rules of the Court as well as the affidavits of Otto B. Rupp and J. E. Peterson of counsel for defendants.

Dated at Seattle, Washington, this 26th day of July, 1922.

S. A. KEENAN,
CHADWICK, McMICKEN, RAMSEY
& RUPP,

Attorneys for Defendants. [138]

No. 3436—No. 3437.

Affidavit of Otto B. Rupp.

State of Washington,
County of King,—ss.

Otto B. Rupp, being first duly sworn on oath, deposes and says: I am of counsel for the defendants in the above-entitled causes; that the trial of the above-entitled causes terminated on April 11, 1922; that on April 12, 1922, an order was duly entered extending the time in which to propose a bill of exceptions therein to May 26, 1922; that on May 26, 1922, another order was duly entered extending said time to and including June 14, 1922; that the reporter's transcript of testimony, consisting of 672 pages, was bound in two separate volumes. It was determined by counsel for defendants, in the preparation of the proposed [139] bill of exceptions, to condense the reporter's transcript by the elimination of all redundant and immaterial matter by setting down the testimony in narrative form so far as practicable. For the accomplishment of that and to divide the labor, I undertook to reduce the first volume to the proper form and Mr. Keenan undertook to reduce the other volume of the testimony to the proper form, all of which was done as expeditiously as possible, the same being completed on or about May 26, 1922. On that day, I took the proposed bill of exceptions, as thus prepared, together with the Court Reporter's entire transcript, to Mr. Lang-

horne at Tacoma, stating that I was not serving it upon him then because I wished him to examine the proposed bill as we had prepared it and if it met with his approval we would deliver it to the Clerk as an agreed bill of exceptions. To this Mr. Langhorne agreed. A few days thereafter, Mr. Langhorne telephoned me that he was satisfied with that part of the testimony which I had placed in condensed form, but was dissatisfied with the portion that Mr. Keenan had prepared; he then suggested that either he or I take the second volume which Mr. Keenan had treated, and place it in condensed form. He said that he was willing to do so, and I told him to do it. On June 6, 1922, Mr. Langhorne called upon me and stated that he desired to make two minor corrections in the portion of the proposed bill which I had prepared, which corrections he immediately made with my approval, and he also stated that he desired to have inserted in that part of the proposed bill I had prepared, copies of the two letters which are plaintiff's Exhibits Nos. 16 and 17 and I agreed to such insertion and they were then inserted as requested. He then stated that he had made extensive changes in the portion of the work which [140] had been done by Mr. Keenan; that in general he had left the direct examination of the witnesses as Mr. Keenan had it, but that he had placed in narrative form, so far as practicable, that portion of the testimony comprised in the cross-examination of all the witnesses whose testimony is found in the second volume of the reporter's transcript. Mr. Langhorne asked me

to look over that which he had done, and stated that if the same was satisfactory to defendants' counsel he then would agree to the proposed bill of exceptions as thus corrected and amended by him. I immediately sent to Mr. Keenan the proposed bill of exceptions as corrected and added to by Mr. Langhorne for Mr. Keenan's inspection and approval. A few days thereafter Mr. Keenan returned the proposed bill of exceptions, as thus amended and corrected, to me with his approval. On June 14, 1922, I caused the said proposed bill of exceptions prepared as aforesaid by Mr. Keenan and myself, and as amended as aforesaid by Mr. Langhorne, to be formally served on Mr. Langhorne at Tacoma, service thereof being duly admitted, and on the same date, June 14, 1922, I caused the said bill of exceptions, as so agreed between counsel for the respective parties, to be settled, to be delivered to the Clerk of the Court at Tacoma, Washington; that no amendments or additions or corrections thereto have ever been served upon any of counsel for defendants by any of counsel for plaintiff; that after the delivery of said proposed bill of exceptions to the clerk of the above-entitled court, neither I nor any of my associate counsel have received any notice or information from the clerk of the court of any [141] day or time being designated or fixed for the settling of said proposed bill of exceptions.

OTTO B. RUPP.

Subscribed and sworn to before me this 26th day of July, 1922.

[Notarial Seal] H. J. RAMSEY,
Notary Public in and for the State of Washington,
Residing at Seattle. [142]

No. 3436—No. 3437.

Affidavit of J. E. Peterson.

State of Washington

County of King,—ss.

J. E. Peterson, being first duly sworn on oath, deposes and says: That I am lawyer associated with the firm of Chadwick, McMicken, Ramsey & Rupp, counsel for the defendant Mutual Life Insurance Company of New York, a corporation; that on June 14, 1922, I took to Tacoma, Washington, a proposed bill of exceptions in the above-entitled causes; that I first served such proposed bill upon Maurice A. Langhorne, one of the attorneys for plaintiff, who at the time stated to me that said proposed bill had been agreed to by counsel for the respective parties. After such service, I took said proposed bill to the office of the Clerk of the above-entitled Court and there delivered the same to said Clerk. That at [143] the time I delivered said bill to said Clerk, I stated to the Clerk that said bill had been agreed to by counsel for the respective parties and was ready for the attention of the Judge; that the Deputy Clerk then stated to me that the Judge was out of the city of Tacoma, but that she would call said proposed bill

to his attention as soon as he returned to said city of Tacoma.

J. E. PETERSON.

Subscribed and sworn to before me this 26th day of July, 1922.

[Notarial Seal] H. J. RAMSEY,
Notary Public in and for the State of Washington,
Residing at Seattle.

Copy of within motion and affidavits received, and due service of same acknowledged this 26th day of July, 1922.

HAYDEN, LANGHORNE & METZGER,
Attorneys for Plaintiff.

[Indorsed]: July 26, 1922. [144]

No. 3436—No. 3437.

Affidavit of Otto B. Rupp.

State of Washington
County of King,—ss.

Otto B. Rupp, being first duly sworn on oath deposes and says:

That no notice having been heretofore given any of counsel for defendants of a time and place when and where the proposed bill of exceptions referred to in a certain affidavit made by him on July 26, 1922, in the above-entitled causes, would be settled and certified, he went on July 11, 1922, to the city of Tacoma; that shortly after his arrival he ascertained that Maurice A. Langhorne, one of counsel for plaintiff, was out of the city; that he then interviewed H. G. Fitch, one of counsel for plain-

tiff, and requested him to go with counsel for defendants before the court for the [145] purpose of securing the settlement by the court of the bill of exceptions in said causes; that thereupon said Fitch requested counsel for defendants that all action in the matter be deferred until the return to Tacoma of Mr. Langhorne from California, which return said Fitch stated would be in about two weeks; that no time having been thereafter fixed by the Court for settlement and certification of said proposed bill of exceptions, counsel for defendants on July 26, 1922, filed a motion in the above-entitled causes, requesting the court to settle and certify said proposed bill; that thereafter, to wit, on the 27th day of July, 1922, the clerk of said Court notified counsel for defendants that the Court had fixed July 31, 1922, for the hearing of said motion; that within one or two days prior to said July 31, 1922, said H. G. Fitch requested that the hearing on said motion be continued until August 7, 1922, on account of the continued absence of Mr. Langhorne from Tacoma; that thereafter counsel for defendants were advised that the Court had continued the hearing on said motion until August 5, 1922.

OTTO B. RUPP.

Subscribed and sworn to before me this 4th day of August, 1922.

[Notarial Seal]

H. J. RAMSEY,

Notary Public in and for the State of Washington,
Residing at Seattle. [146]

Copy of within affidavit received, and due service of same acknowledged this 5th day of August, 1922.

H. G. FITCH and
HAYDEN, LANGHORNE & METZGER,
Attorneys for Plaintiff.
[Endorsed]: Aug. 5, 1922. [147]

No. 3436—No. 3437.

Affidavit of H. G. Fitch.

United States of America,
Western District of Washington,
Southern Division,—ss.

H. G. Fitch, being first duly sworn, on oath deposes and says: That he is one of the attorneys for the plaintiff in the above-entitled actions; that at all times since the judgment in said actions was signed and filed in the office of the Clerk of this court, and at all times since the bill of exceptions was filed in said cases under date of June 14, 1922, the Honorable Edward E. Cushman, Judge of this court, has been within the Western District of Washington, either at Tacoma or Seattle, and has at no time since said date been without the boundaries of said district, and has at all times since said date been continuously engaged in holding [148] court either in Tacoma or Seattle.

Further affiant sayeth not.

H. G. FITCH,

Subscribed and sworn to before me this 5th day of August, 1922.

[Notarial Seal] F. D. METZGER,
Notary Public in and for the State of Washington,
Residing at Tacoma.

Due service of the within and foregoing affidavit by receipt of a true copy thereof, together with true copies of the exhibits recited therein as being attached thereto, hereby is admitted in behalf of all parties entitled to such service by law or by rules of court, this 5th day of August, 1922.

S. A. KEENAN,
CHADWICK, McMICKEN, RAMSEY
& RUPP,

Attorneys for Defendants.

[Indorsed]: Aug. 5, 1922. [149]

No. 3436—No. 3437.

Bill of Exceptions.

BE IT REMEMBERED, that heretofore, to wit, on April 4, 1922, the above-entitled causes came regularly on for trial in the above court before the Honorable Edward E. Cushman, Judge of said court sitting without a jury, a stipulation in writing waiving a jury having been heretofore filed with the Clerk, the plaintiff appearing by Maurice A. Langhorne of Messrs. Hayden, Langhorne & Metzger, Mr. H. G. Fitch and Mr. A. H. Imus, her attorneys and counsel, and the defendants appearing

by Mr. S. A. Keenan, Mr. Otto B. Rupp of Messrs. Chadwick, McMicken, Ramsey & Rupp, Mr. O. B. Thorgrimson of Messrs. [150] Preston, Thorgrimson & Turner, and Mr. James H. Guest of counsel, their attorneys and counsel.

And thereupon the following proceedings were had and done, to wit:

The depositions of Walter H. Comber, K. Hanson, George Hedges, William Paul Koeper, F. C. Meyer, J. A. Moore, Orville Onorato, Spira Papalian, Arthur E. Pooley and Benjamin Vienna were ordered by the Court published.

Thereupon Mr. S. A. Keenan of counsel for defendants moved the Court for an order requiring that counsel for plaintiff state whether the death of Frederick L. Stewart was caused by suicide or accident.

It was thereupon stated by Mr. Maurice A. Langhorne of counsel for plaintiff that the case would be tried on the theory that said Stewart voluntarily ended his own life.

Testimony of Claude P. Hay, for Plaintiff.

CLAUDE P. HAY, being first duly sworn, testified on behalf of plaintiff as follows:

Direct Examination.

I now live at Sultan, Washington, where I first went in March, 1915. In March, 1921, I was bank commissioner of the State of Washington, and had held such position for about a year. I knew Fred L. Stewart of Kelso and had known him prior to March 17, 1921, for eight or ten years. He was

(Testimony of Claude P. Hay.)

cashier of the Kelso State Bank at Kelso. I couldn't say how long he had been in the banking business, but quite a while. [151] He was engaged in that business ever since I was bank commissioner. I have known Louis Plamondon of Woodland for seven or eight years perhaps. He was the managing officer of the Woodland State Bank at Woodland. I am acquainted with George F. Plamondon and was acquainted with him in March, 1921. He was assistant cashier of the Kelso State Bank.

I went to Kelso on the evening of March 16, 1921, to determine what action should be taken in connection with the affairs of the Kelso State Bank. I cannot recall whether I heard from Louis Plamondon on that day or not, but he had written me concerning an investigation that he had made of the affairs of the Kelso State Bank. I don't have the original report which he made as the same would be in the files in the State Banking Department or possibly with the liquidating officer of the bank. The papers just handed me I think are correct copies of the originals.

So far as I am aware Stewart did not have any notice of my coming to Kelso on the evening of March 16, 1921. At least I did not give him any notice.

The COURT.—How old a man was Stewart?

Mr. LANGHORNE.—Stewart was forty-nine.

When I arrived in Kelso that evening I saw Stewart at the Kelso State Bank and made known to him the object of my business. Stewart and the others

(Testimony of Claude P. Hay.)

present, together with myself, went over the affairs of the bank and determined that it was in serious enough condition for me to close the bank unless some immediate aid could be obtained. I arrived in Kelso that evening between seven and nine o'clock. I went to Portland the next morning with Stewart, leaving Kelso about five o'clock. I rather think I suggested making the [152] trip to Portland, my reason being that after analyzing the situation carefully I determined there was only one source from which aid could be obtained, and that was through a gentleman named E. S. Collins who was president of the First National Bank of Kelso and also a stockholder in the Kelso State Bank. Because of his large means and his investments in the vicinity I thought he was the logical man to aid, if aid was to be obtained. Therefore we went to Portland. I saw Mr. Collins after my arrival in Portland somewhere between eight and eight-thirty in the morning. We received no aid from him. About ten o'clock I took the train at Portland for Kelso. So far as I now recall I left Stewart at the Oregon Hotel in Portland, and from that hotel I went direct to the depot. I noticed that during the time we were going down to Portland and at the time I was in Portland with him that Stewart was very pale and under a great strain. He didn't talk very much. I remember that he asked me several times my opinion as to whether or not Collins would help us. I didn't pay very much attention to just what he did say because it was just what one

(Testimony of Claude P. Hay.)

might expect from a man laboring under great excitement, and Stewart appeared to be laboring under great excitement.

I reached Kelso on March 17th, upon my return from Portland, about noon. While in Mr. Collins' office in Portland I had arranged to have the cashier of the Kelso State Bank get in touch with the officers of the bank at Castle Rock, the next town to Kelso, and they were to be at the Kelso Bank when I arrived in Kelso. I closed the bank in Kelso. I found in the bank three or four pistols and a sawed-off shotgun. I unloaded them. [153]

Q. Why?

Mr. KEENAN.—If the Court please, we object to that as being wholly immaterial.

Mr. LANGHORNE.—What was in his mind. It was due to his association with Stewart for a night and part of a day.

The COURT.—Oh, he may answer. I don't see the materiality of it. He can answer it more quickly than discuss it probably.

A. I unloaded all the weapons I could find.

Q. Why?

Mr. KEENAN.—I object to that. The witness' opinion would not enlighten the Court any in this case.

The COURT.—Objection overruled.

Mr. LANGHORNE.—Answer the question.

A. I wanted to remove any opportunity that Mr. Stewart might have to do anything rash. I was a little concerned as to what he might do.

(Testimony of Claude P. Hay.)

About three that afternoon Stewart called me up on the telephone and we talked briefly. I then informed him of the action I had taken, and he replied that it was too bad because he had raised the money. I then said "you come up with it as soon as you can and we will see what we can do," and he said that he would be up on the train at four o'clock or else he would take another train and I think he said come up on the other side of the river.

I worked at the bank until somewhere around nine o'clock and then went to my hotel. While there George Plamondon called me up and asked me if I would come down to his house. I said I would come down if he wanted me to. I had been up practically all night and didn't care about going, but I [154] agreed to go. I saw Mr. Plamondon.

Q. What did you hear; what did he tell you?

Mr. RUPP.—Objected to on the ground that it is immaterial.

The COURT.—Objection overruled.

Q. What did he tell you?

Mr. RUPP.—An exception.

The COURT.—Allowed.

A. When I stepped on the porch at Mr. Plamondon's house the door was open and as I stepped in he said, "Well, Fred has done it." I said, "Did he shoot himself?" and he said, "No, he went in the river."

Cross-examination.

(By Mr. RUPP.)

The conversation which I had with Stewart on the

(Testimony of Claude P. Hay.)

night of March 16, 1921, continued from the time that I arrived at the bank until one or two in the morning. The conversation may not have lasted that long but the conference during which the conversation occurred did last that long. At the beginning of the conference Stewart, myself and George Plamondon were there; Louis Plamondon came in I think later. Mr. Collins of Portland was, outside of Stewart, one of the largest stockholders in the Kelso State Bank. I had made three examinations, I think, in years gone by of the Kelso State Bank, but the one or ones immediately preceding March, 1921, were made by the examiners under me. I originally went with the Banking Department in 1908, but did not serve continuously. I left the department a number of times to liquidate banks and to work in banks. The first time I examined the Kelso bank was, I would say, somewhere around 1915; it might have been the year before or the year later. [155] I think that all the examinations that I made were made one each year, each succeeding year. There might have been a year in between when some other examiner made it, but as I recall it, my examinations were year after year. One examination was made by an examiner under me after I became Commissioner. That examination was made by Bennett and Knapp. The report they sent in concerning the Kelso State Bank was a very unfavorable report and at the times that I myself had examined it, it was not in good financial condition. I never had known a time when I had

(Testimony of Claude P. Hay.)

felt satisfied with the examination. The Bennett and Knapp examination was made in November, 1920. I had a conversation with Stewart after November, 1920, and before March 16, 1921. That conversation took place at my office in Olympia on Sunday night March 6, 1921, when I demanded his resignation. I asked Stewart to come to Olympia. I told him my reason for demanding his resignation was that I was not satisfied with his management of the institution. I cannot recall whether he wrote out his resignation then or not, but I don't think he did. It was my intention to have him understand that he would have to sever his connection with the bank, but I did not care to give any publicity to it at the time for fear of the ill effect it might have on the institution. The understanding was that the management of the bank should be virtually turned over to someone else and that he would resign as soon as he could gracefully do so. My trip to Kelso on March 16th was not due to the fact that he had not resigned. I cannot recall that I anticipated the receipt of his resignation before the 16th of March and I do not think that I heard anything from Stewart between March 6th and March 16th concerning my request for his resignation and a change in the [156] management of the bank. I do not recall having any conversations with Stewart except those which took place when the various examinations were made but at each examination all objectionable items were criticised and he was given a copy of the criticisms. When an

(Testimony of Claude P. Hay.)

examination is made there are two sheets of criticisms which are a part of the report, which are made in duplicate. The duplicates are left with the bank at the time and supplemental instructions are sent out from the commissioner if he deems advisable by letter from headquarters. I did, however, at the times I examined the bank, talk to Stewart and told him each time that the condition of his bank was unsatisfactory.

Redirect Examination.

(By Mr. LANGHORNE.)

The report to Louis Plamondon was made after the conversation I had with Stewart on March 6th.

Q. And isn't it a fact that it was between March 6th and the date of this report, which was March 14th, that you had requested Mr. Plamondon to make an examination of the bank? (Handing witness paper.)

A. I hadn't requested that this report be made.

Recross-examination.

(By Mr. RUPP.)

I do not recall that Stewart raised any objection to going to Portland on March 17th. I am quite sure that I am the one who suggested the trip. At the conference on the night of March 16th Mr. Carothers, one of the directors of the [157] bank, may have been present. I do not now recall whether he was there or not. No one of the other directors was present.

Testimony of H. E. McKenny, for Plaintiff.

H. E. McKENNY testified on behalf of the plaintiff as follows:

(By Mr. LANGHORNE.)

I live at Kelso, Washington, and have lived there for twenty-two years. I have held the following official positions in Cowlitz County: Prosecuting Attorney, State Senator and Judge of the Superior Court. I am now practicing law at Kelso. I am the administrator of the estate of Frederick L. Stewart, deceased, appointed as such by the Superior Court of Cowlitz County. I was so appointed in the latter part of March, the exact date I do not remember. I had been acquainted with Fred L. Stewart since June, 1889. I was not interested with him in the bank at the time of its failure, but was interested with him in a good many other matters. I had been at one time a stockholder in the bank.

The amount of claims filed against the estate of Fred L. Stewart is \$72,721.17. All these claims have been allowed by me as administrator, but not all of them as yet by the Superior Court because I have not taken some of them up with the Court yet. The inventory of the estate shows in the neighborhood of \$160,000, practically all of it encumbered by mortgages. Suits have been instituted to foreclose some of these mortgages. The paper just shown me purports to be [158] a suit by the American Savings Bank & Trust Company against myself as administrator of the estate of Frederick L. Stewart, deceased, and has not as yet been

(Testimony of H. E. McKenny.)

served upon me. By looking at such paper and ascertaining the land described therein, I can say that I think that there are suits now pending covering all the real estate belonging to Stewart except two small tracts of timber land in Okanogan County. The mortgage indebtedness against the farm which is appraised at \$100,000 is \$126,000. I have not seen the figures in the papers just shown me, but knowing that the claim amounts to something over \$40,000 I presume that is the amount set forth therein. The mortgage indebtedness is considerably more than the value of the estate as shown by the inventory. The estate could not redeem. The total amount I have taken in is \$1,475.72. I have expended to date \$431.55. I have a trifle over \$1,000 on hand all told. The inventory value I gave includes everything, personal as well as real property.

I received a communication from Fred L. Stewart on the morning of March 18th. I do not have it with me. I have the envelope it came in and the enclosure, but I mislaid the letter in some way. I could not find it.

(Whereupon there was offered and admitted in evidence without objection the enclosure and envelope just mentioned and same were marked Plaintiff's Exhibit 1.)

The enclosure just mentioned is a deed to a quarter interest in the farm which I have just mentioned as having been appraised at \$100,000. I have been previously interested in this farm and

(Testimony of H. E. McKenny.)

Stewart bought me out. He had not paid me for it and I presume, according to his letter, he [159] wanted to make me as near whole as possible. I could not find the letter yesterday, although I tried to. I made a search for it. As I remember the contents of the letter, and I read it over quite carefully, he said that he would have to make a trip to California for the purpose of raising funds because he was very close run and could not make it without getting money somewhere; that I would find this deed enclosed and he hoped I would be able to get even. I know that Stewart sent a deed to Al Maurer of Kelso from Portland, which was received on the morning's mail on March 18th. Maurer had the same interest in the property which I did. I have the envelope, letter and deed sent to Mr. Maurer by Stewart with me.

(Thereupon said envelope, letter and deed were offered in evidence and received without objection and marked Plaintiff's Exhibit 2.)

I know also that James Crouch on the morning of March 18th received from Stewart a deed to a quarter interest in the same property.

No claims have been filed with me as administrator of the estate growing out of the transactions with Fred Stewart on the 17th of March, 1921, or for some days prior thereto.

Cross-examination.

(By Mr. RUPP.)

I was a stockholder in the Kelso State Bank in 1899. I ceased to be a stockholder in January, 1906,

(Testimony of H. E. McKenny.)

at which time I went to southern Oregon. Stewart made the arrangements [160] for the purchase of my stock, but the same was sold to the Weyerhaeuser Timber Company. The stock, however, was not transferred to the company but to some officer thereof. I cannot remember just when I was appointed administrator, but it was just a few days after Stewart disappeared. As administrator there came into my possession two life insurance policies payable to the estate of Frederick L. Stewart, one being that of the Bankers' Life of Des Moines, for \$6,000 and one that of the Northern Life for \$5,000.

Redirect Examination.

(By Mr. LANGHORNE.)

I did not bring an accident policy that was issued on the 17th day of March, 1921. I mailed that to you several days ago in a letter. There came into my possession, however, an accident policy for \$2500 executed by the Travelers' Life payable to the estate I presume. This policy was issued on March 17th. I mailed that policy to you four or five days ago.

Recross-examination.

(By Mr. RUPP.)

This accident policy is one of these small insurance policies which resemble in form a ticket such as people buy at the train.

The COURT.—Do you remember whether that was something got in Portland or in Kelso?

(Testimony of H. E. McKenny.)

The WITNESS.—That was got in Portland. Mr. Sardam brought it to me. I cannot tell how he got it but it was in Stewart's grip left on the boat as I remember. [161]

Testimony of A. C. Stevens, for Plaintiff.

A. C. STEVENS, being first duly sworn, testified on behalf of the plaintiff as follows:

(By Mr. LANGHORNE.)

I live in Portland, Oregon, and have lived there since 1914. I am now and since 1914 have been engaged in the automobile business in Portland, handling Haynes and Winton cars. I had been acquainted with Fred Stewart for about one year prior to his disappearance. I saw him during that period six or eight times approximately. I had conversations with him when I saw him and became fairly well acquainted with him. I saw Stewart at my office in Portland between 1:30 and 2 o'clock on the afternoon of March 17th. My office is at Sixteenth and Washington Streets. At that time Stewart was very different in his conversation. He seemed to be pale and he would talk in a loud voice for a few minutes then he would dwindle down you couldn't hardly hear him; he was changeable; he didn't follow out any conversation continuously.

The COURT.—Is that what you mean by indifferent?

The WITNESS.—Yes.

Q. Did he seem to be under any excitement or strain?

(Testimony of A. C. Stevens.)

A. He said his car was coming down that afternoon and he wanted me to sell it for him. He was going down to southern California and he would take a new car later on in California. I told him that it was impossible for us to sell the car and get any kind of a price out of it at that time owing to the used car market, and that it would be better for him to keep his car and take it down there and use it. He then decided that I should take the car and store it until he wanted it and I could ship it down to San Pedro and he could get it there. [162] Somewhere between four and four thirty that afternoon the car arrived and my service man stored it for the time being at the Speedwell Garage, 14th and Couch Street, two blocks away from my business. We got a storage check from the garage showing the storage of the car, same being delivered to my service man who took the car there. This check was put in our office and was there on the night of March 17th and so remained until Mrs. Stewart wrote down for the car some weeks afterwards. The check is in our files. I have shown it to several insurance men, who came in there making inquiry on it. I tried to find it the other day and couldn't locate it. I am in a position to state that the car was in the garage on the night of March 17th and that it there remained until March 23d. I paid charges on it for that period of time and have the bill with me.

(Whereupon such bill was offered in evidence, without objection, and same was received and marked Plaintiff's Exhibit 3.)

(Testimony of A. C. Stevens.)

Cross-examination.

(By Mr. KEENAN.)

The man sent by Mrs. Stewart to Portland to get the car was named Hayes, I believe. I have a letter here that Mrs. Stewart sent down with Hayes. He is the same man who brought the car in on March 17th.

(Whereupon said letter was offered in evidence and received without objection and marked Defendants' Exhibit "A.") [163]

When Stewart was in my office on the afternoon of March 17th, he did not say anything about the ownership of the car. I, however, sold this car and the understanding I had all the time was that this car was bought for Mrs. Stewart and that she was to be taught how to drive it and that it was her car. I am the one who suggested that it would be better to ship the car to California than for me to sell it and he in turn buy a new one. He finally acceded to my suggestion and stated that he would advise me of the place to which it would be shipped. San Pedro, however, is usually the shipping point. He asked me where I could ship it to and I told him San Pedro and our agency in San Francisco would take the car and hold it there for him. On March 17th when he was in my office he mentioned a few little things to do. He said he had a rattle in the spring bolt and he thought it was missing. My service man turned it up. He only spent a few minutes on it for which there was no charge made. He gave no further instructions as to the

(Testimony of A. C. Stevens.)

disposition of the car, except to keep it until he had advised me and did not try to have me arrange for a sale of the car that particular day.

Testimony of George F. Plamondon, for Plaintiff.

GEORGE F. PLAMONDON, being first duly sworn, testified on behalf of the plaintiff as follows: (By Mr. LANGHORNE.)

My home is really at Kelso, but I am working at Woodland for the time being. I am a brother of Louis Plamondon. In March of last year I was living in Kelso and was assistant cashier of the Kelso State Bank. I was with the bank for about [164] twelve and one-half years. I was assistant cashier for around six years. I was acquainted with Stewart; was in the bank throughout business hours on March 16, 1921; the bank closed at three o'clock. I closed it, just the same as any other day. We balanced up our cash, balanced up our books and when the business was done we put the money in the safe, set the time locks, put our books away and locked the vault. The cash was all put in the vault that night and the time locks set for eight the following morning. It could not be opened before that time unless acetylene torches and things of that sort were used.

I saw Mr. Hay on the night of the 16th and was at the conference between Mr. Hay and Mr. Stewart. That conference lasted, as I recall, from ten or ten thirty until after one o'clock. At the time the conference broke up Stewart was pretty badly

(Testimony of George F. Plamondon.)

shaken. I have no other way of describing his condition except to say he was worried. That had been his condition for several days past, very much worried and having difficulty in standing up under it. On the night of March 17th about nine o'clock I was on my way to Kalama, due to a telephone call I had received from Mr. Stuart, the prosecuting attorney. I saw Mr. Hay that evening before I went to Kalama and had a conversation with him.

Mr. KEENAN.—If the Court please, we object to that as being wholly immaterial,—the conversation which took place between Mr. Plamondon and Mr. Hays.

Mr. LANGHORNE.—Yes, and I contend, if your Honor please, that just as quick as he heard of it, whatever was said and done at that particular time is just as much a part of the *res gestae* as if this conversation took place right there at the boat.
[165]

The COURT.—I am admitting this kind of testimony. It may not be the best testimony, but it does throw some light on the degree of care and scrutiny with which each particular witness might have been observing Mr. Stewart's appearance, conduct and demeanor. Objection overruled.

Mr. KEENAN.—An exception.

I do not know that I can recall the exact words I used but the effect was that "Fred had done it." By saying that Fred had done it I meant that he had made way with himself.

(Testimony of George F. Plamondon.)

I had knowledge of Mr. Hays coming to Kelso on the night of March 16th. I was so informed by Mr. Carothers, the President of the Kelso State Bank. I did not tell Stewart that Mr. Hays was coming, Mr. Carothers having asked me not to mention it.

Cross-examination.

(By Mr. KEENAN.)

I heard Mr. Hays' testimony in court this forenoon. I had knowledge in a general way of the request made by the banking department on Stewart to resign. I had talked that matter over with Stewart himself the next morning after he came back from Olympia.

Q. Well, did he look any more shook up at that time than on the 17th of March?

A. I don't know how I can answer that. He looked pretty bad I thought that morning when he returned from Olympia. I would say that he appeared more nervous on the 17th of March than on the 7th. I had not very often seen him look nervous and disturbed before March 7th. My recollection is that he [166] was nervous after the examination made in November, 1920, by the State Banking Department. It is somewhat difficult for me to say how nervous he then was, but he was worried and I remember the remark he made to me what a relief it was that the examination was over. The regular bank examinations were once a year. I do not recall any special examinations other than the regular bank examinations. I can-

(Testimony of George F. Plamondon.)

not say whether the admonitions of the banking department were the same, that he would have to straighten the bank up or they would close it, because I never saw the correspondence that had passed between Stewart and the banking department. I knew before March 6th that the bank was embarrassed in that we had to borrow money. As to its being in a bad condition I was not fully aware of it. I had a general knowledge of Stewart's relations with the bank. I would not say that his account with the bank was usually overdrawn, but he would have overdrafts quite frequently. I cannot recall off-hand how many accommodation notes he had in the bank. I do not know of any accommodation notes that Carl Hayes put in there. I do recall a transaction where a dance-hall was sold a few months before Stewart went away and it had appeared upon the records that Hayes had bought the place. I do not recall that Stewart procured Hayes to give a fourteen hundred dollar note when he paid nothing whatever for the dance-hall. I was in on the deal for the purchase of the dance-hall. It is not exactly correct to say that the dance-hall was bought by Stewart and myself and that we used Carl Hayes' name to give the note. I believe Stewart gave Hayes the amount that each of us got, three hundred dollars and something, I can't recall the exact amount. Mr. Adams would know. I believe that Stewart bought the dance-hall from Mr. McDonald. Now, [167] whether or not Stewart or Hayes bought it I can-

(Testimony of George F. Plamondon.)

not say. Whether it was mortgaged for all it was worth when McDonald had it, would be a matter of opinion only. I don't know what McDonald got. We then made a pretended sale to Hayes and took a note for \$1400.00 from him. That note was never paid by Hayes. I cannot recall any other transaction when Hayes came in and gave an accommodation note. The fourteen hundred dollar note that Hayes gave was sold to the bank and Stewart, Hayes and myself each took one-third of the fourteen hundred dollars.

Redirect Examination.

(Mr. LANGHORNE.)

Q. Anything wrong about it that you know of that the property was mortgaged for all it was worth?

A. No, sir. Upon the request of Mr. Adams I very gladly repaid what Stewart gave me at that time.

After the bank closed I did not go in Mr. Stewart's safety deposit box, but Mr. Sardam, Mr. McKenny and I were there when the box was opened. It is my recollection that the paper just handed me was one of the papers found in the box, likewise the envelope.

(Whereupon said papers were marked Plaintiff's Exhibit for identification.)

Recross-examination.

(By Mr. KEENAN.)

Mr. Sardam was not present at the conference

(Testimony of George F. Plamondon.)

on the [168] night of March 16th. I do not know whether he was in the bank on the night of the 15th, as I was not there. Mr. Sardam was probably in the bank on the 15th and 16th because, as I remember, Sardam and Mrs. Sardam were visiting there for several days and Mr. Sardam was in and out. I cannot say how much of the time or how often he was in the bank on the 17th.

(Testimony of the witness closed.)

It was then admitted by Mr. Keenan, counsel for the Prudential Insurance Company, that the last annual premium due prior to Mr. Stewart's disappearance had been paid. Whereupon there was offered and admitted in evidence, without objection, three insurance policies executed by the Prudential Insurance Company and two insurance policies executed by the Mutual Life Insurance Company of New York, same being marked Plaintiff's Exhibits 4, 5, 6, and 8.

Testimony of Robert W. Roberts, for Plaintiff.

ROBERT W. ROBERTS, being first duly sworn, testified on behalf of the plaintiff as follows:
(By Mr. LANGHORNE.)

I live at Portland, Oregon, and have lived there about twenty-two years. In March of last year I was and had been at all times since November, 1905, a red cap porter at the Union Station. I knew Fred L. Stewart of Kelso and had known him about three or four years. I have waited on him; I knew him well enough to simply greet him like

(Testimony of Robert W. Roberts.)

“How do you do, [169] Mr. Stewart,” and whenever I handed him his baggage I met him. Of course he didn’t know my name that I know of. I only knew him by seeing him and handling him so much. He made frequent trips to Portland. I remember seeing him in March of last year, but don’t remember the date. I saw him, however, on the day of his disappearance about four o’clock in the afternoon. A Union Pacific train leaves the Union Station at four o’clock for Seattle. In my capacity as porter at the depot we met taxicabs and busses to assist the passengers to and fro and I met this cab at the curb. I got Mr. Stewart’s baggage which, if I remember correctly, was a handbag and a brief case. So I says, “How do you do Mr. Stewart,” and took his baggage immediately inside of the door and waited on his motions. He paid the taxi man and dismissed him. He didn’t come in the house, in the building, at all. He waited outside and I was looking out of the door at him just to see what his actions were and waiting on him, and I thought he stopped to recognize some friends. But he just walked around a few steps and looked like he was in a great quandary, undecided which way to go or what to do. Then he came up the steps and beckoned to me to come out with his baggage. I came out with his baggage and he said, “Put it in this car here, the first one.” I said, “Have you changed your mind Mr. Stewart?” and he said “Yes, I have.” And with that he drove away. I never saw him again.

(Testimony of Robert W. Roberts.)

He looked like he was in a deep study or had not reached a decision whether to go or not to go or go in what direction. He looked like a man—walking around outside. That was unusual for him at the times I have noticed him because he was always a thoroughgoing man, looked like he always decided which way to go, and never back and forth in that manner. [170]

Cross-examination.

(By Mr. KEENAN.)

The first time I thought about this occurrence of Mr. Stewart's was the next day when it appeared in the morning paper and I talked with my co-workers down there right along because there was several of us who knew him quite well and we were saying how bad it was that that happened, knowing him so well.

I recognized him as soon as he got out of the cab. What caused me to recognize him was because he was a very pleasant man and having traveled so often his face was very familiar. I was particularly familiar with the manner in which he walked. I never noticed anything peculiar about his walk. He was a slender man, not a fat man.

I did not say that I thought he was talking with somebody for a moment when he got out of the cab. I said I went inside and had his baggage waiting for him and he stopped there as if he was waiting for a friend who might approach him, evidently looking for someone. I thought that at first. I

(Testimony of Claude Hanson.)

didn't see him say a word except to pay his taxi man when he got out of the cab in the first place.

Testimony of Clyde Hanson, for Plaintiff.

CLYDE HANSON, being first duly sworn, testified on behalf of the plaintiff as follows:

(By Mr. LANGHORNE.)

I am living now at Central Point, Oregon, but am working at Napa for the logging road. Napa is thirteen miles from [171] Astoria toward Portland. On March 17th last I was living at Deer Island which is six miles down the Columbia River from St. Helens. I was working at St. Helens having an interest in a garage there at that time. I was in the garage on the evening of March 17th last, but not in St. Helens, the garage being about one mile and a half from St. Helens. The train does not run through the city of St. Helens, but one mile and a half away therefrom. The train which leaves Portland about six in the evening, reaches St. Helens about 7:40. At that time I was at the depot with a taxicar.

I knew Fred Stewart of Kelso. He got off the train that evening. He came to the car just as the train was pulling out and asked me if I could meet the boat before the train pulled out, beat the train to Goble, and I said I didn't think I could as it was a fast train and I had to go to the garage a couple of blocks from the depot before I could go and that would make me three or four minutes behind the train. I drove, however, at a rapid pace and missed the boat about a minute I should judge.

(Testimony of Clyde Hanson.)

It was just out in the river a couple of hundred feet. When we got there he got out and paid me for the trip and asked me if I knew who he was and I said "No, I don't," and he said, "I am Fred Stewart." I shook hands with him; I had known him for a good many years. We spoke a few words. I asked him how business was and he said, "Well, fairly good," and he asked me if there was another boat and I said, "I don't know but I will go and find out." I went to the depot and asked, and there was another one in about thirty minutes. He said, "All right. I will go then and call up my wife and have her meet me in Kalama." That is all that was said between Stewart and myself.

The reason I did not know him was because it was dark, [172] he had his overcoat on turned up around his neck. There was nothing unusual in his manner which struck me at that time, although the next morning after I heard he was drowned I saw then where he did act very different than he usually did. I started on my return trip from Goble in about five minutes after I reached there. I stopped at Goble about two hundred feet from where the ferry boat lands. At Goble there is a depot, confectionery store, dry goods store and grocery store.

Cross-examination.

(By Mr. KEENAN.)

Stewart had on a regular overcoat, I think. It was dark and I don't remember. I don't remember the color. I think he had a hat on. I was on the

(Testimony of Clyde Hanson.)

platform when the train came in, but don't recall seeing him get off. Stewart came to the car. A man named Johnson sent him to my car. I don't recollect whether Stewart told me that he just got off, but I knew that he just got off the train. I think it took me from eighteen to twenty minutes to drive to Goble. Stewart sat in the back seat. Not a word was spoken after we left, and when we got to Goble I got out first and opened the door. Then he got out and unbuttoned his coat and got his money to pay me. Then he said "Don't you know me?" I replied that I didn't. I recognized him when he told me who he was. I think that was just before he paid me. I had known him for twenty years I think. I think he had his overcoat turned up and buttoned. I do not know whether he had his hat pulled down pretty well to his ears. The reason I did not get a very good look at his face was that it was after dark, about 7:40 in the evening, and he seemed to be in [173] a hurry. I didn't take any time. I stopped my car about one hundred feet from the depot at Goble. My car was between the depot and the ferry slip and I was about 100 feet maybe in that far from the slip. I was in plain view of the slip. I did not notice one of the ferries which carry automobiles with a little pilot house in the center standing there. I do not know that I formed any opinion as to why Stewart asked me "Don't you know me?" He had known me for a great many years. Whenever he met me he always said, "Hello, Clyde," or "How are you, Clyde," call-

(Testimony of Clyde Hanson.)

ing me by my first name. I do not recall exactly what was said, but he asked me if I didn't know him. If I had seen Stewart walk around that evening I would have recognized him. He walked with his head thrown back and his shoulders straight. His pace was quite quick. The train was on time that night, I think, when it got to St. Helens. The due time of the train may have been 7:18 instead of 7:40, I do not know the exact time.

Redirect Examination.

(Mr. LANGHORNE.)

It was very rainy and stormy that night.

I was one of the depositors in the Kelso State Bank when it failed.

Testimony of T. H. Adams, for Plaintiff.

T. H. ADAMS, being first duly sworn, testified on behalf of the plaintiff as follows:

(By Mr. LANGHORNE.)

I live in Vancouver, Washington, and have lived there [174] sixteen years. I am now the Special Deputy Supervisor of Banking, winding up the affairs of the Kelso State Bank. I did not publish a notice to creditors, that notice having been published before I took charge. I am acquainted with the claims that have been filed against the bank, and no claims have been filed against the bank growing out of any transaction with Fred Stewart on the 17th of March or for some ten days prior thereto.

(Testimony of T. H. Adams.)

Cross-examination.

(By Mr. RUPP.)

I have made a pretty thorough examination of the condition of the Kelso State Bank back to 1910. The record is not perfect back of that date, but from that date on I am thoroughly familiar with it. My judgment is that the bank never could have liquidated and paid in full its depositors since 1910.

With reference to a transaction concerning some notes of \$800, I can say that there had been a disaster to one of the industries of Kelso. The Thompson Ford Lumber Company's mill had burned and as I have understood, Stewart had busied himself in a patriotic way trying to get the mill rebuilt with the result that twenty-five prominent citizens of Kelso had agreed to contribute \$800 each to the rebuilding of the mill and take a first mortgage covering all of the notes of \$800 each. Stewart was one of them and George Plamondon another. The notes were executed by the Thompson Ford Lumber Company in favor of each of these gentlemen, one to Stewart and one to Plamondon. The name "George F. Plamondon" was erased and the name "Kelso State Bank" was inserted, and the name "F. L. Stewart" [175] erased and the name "Kelso State Bank" inserted as payee. One or the other of the amounts—not having thought of it for some little time—but one or the other of the \$800 amounts was credited direct to the Thompson Ford Lumber Company and the other to the other payee and a check

(Testimony of T. H. Adams.)

was given to the Thompson Ford Lumber Company for the amount. These notes have not been liquidated so far as I know, but at my request George Plamondon took them up and reimbursed the bank for them.

With reference to the Philip Richter Estate, I cannot tell very much of Stewart's handling of this estate except two or three transactions which affected the Kelso State Bank.

It was thereupon stipulation by and between counsel for the respective parties that prior to March 16th, 1921, F. L. Stewart had used moneys of the Richter Estate to the amount of several thousand dollars which moneys he was not entitled to use and which, if informed against, rendered him subject to the penal laws of the state and if convicted to confinement in the State Penitentiary to whatsoever punishment the statute provides.

Q. Mr. Adams, what can you say from an examination of the books of the bank as to whether or not the bank was hopelessly insolvent for a period we will say of six months before March 16, 1921?

A. There was no particular change in the bank during that period of time. It was in substantially the same condition six months before the closing that it was on the day of the closing. It was in this much worse condition that notes would be renewed with the interest added and [176] perhaps some other poor notes taken in, but substantially the same condition prevailed.

(Testimony of T. H. Adams.)

That condition would have been apparent to me and I may say to any man who made a careful analysis of the paper without too much optimism or hopes for the best happening.

Testimony of Carl H. Hayes, for Plaintiff.

CARL H. HAYES, being first duly sworn, testified on behalf of the plaintiff as follows:

(By Mr. LANGHORNE.)

I live at Kelso and have lived there about thirteen years. I was acquainted with Fred Stewart and we were somewhat friendly. I had known Stewart ever since I have lived in Kelso.

I went to Portland on March 17, 1921, starting from the Peters Garage in Kelso. I drove Mrs. Stewart's car to the Haynes garage somewhere on 16th and Washington Street in Portland. I arrived in Portland somewhere between three and four o'clock. I left Portland that afternoon on what is known as the North Bank Road on the Oregon side of the river going to Rainier. There is a ferry runs from Rainier to Kelso, crossing the Columbia River and then steaming up to Kelso. After I got on the train I saw several Kelso people on the train, among them Stewart. He was in the chair car. I talked with him a little while, and he asked me if I had heard what had occurred in Kelso, meaning the failure of the bank. I told him I had, and he asked me several questions about it but his voice would seem to change in a way that I couldn't understand very well. The train

(Testimony of Carl H. Hayes.)

was making a noise [177] and I couldn't understand very much that he said. Anyway he talked about the bank and I asked him if he was going to be able to get it straightened out and he said that he thought he would. He said that he had made arrangements about getting some financial aid in Portland, but he didn't know whether he would be able to get enough or not.

Q. Did he ask you to leave him or did he say anything that caused you to leave him?

A. Yes, he said that he was tired and worn out and he was going to try to get a little sleep if he could, and I thought probably that was the best thing for him and told him I would go back in the smoking car and wake him up.

I understood he was going to Rainier, but he later didn't go that far. I went back to call him when we got at Rainier, but he was not on the train so I supposed that he had got off at Goble where he often got off, and crossed the river at Kalama. His condition that evening was such that I couldn't understand him. His voice was changed and he was completely worn out, just like a man that had just got out of the hospital. There was no color in his face and no pep at all. He seemed to be worried and nervous, just a physical wreck; not the same man at all that I had known before.

I did not see him in Portland prior to getting on the train. I got off at Rainier and crossed over on the launch "Eadem." George Polen, check

(Testimony of Carl H. Hayes.)

of the School Board at Kelso and George Umbaugh, editor of "The Kelsonian," were on board and Charley Abbott, a druggist at Kelso, also, crossed over on the "Eadem" to Kelso. I told these gentlemen that Stewart was on the train, and that I had been back there and talked with Stewart. No one of them said anything to me about seeing him get on the train at the North Bank station [178] at Portland.

Cross-examination.

(By Mr. KEENAN.)

I do not remember the exact time I left Kelso that morning. It was somewhere about one o'clock. The bank was closed at that time; it had been closed about noon—about an hour before I left. I had dinner about twenty-five or thirty minutes before I left. Nobody rode with me in the machine to Portland. I reached Portland somewhere between three and four o'clock. After I left the car at Mr. Stevens' place I went down town and did not have any particular place to go. I didn't wait; thought I would see Stewart in Portland, and ride down with him on the train. I wanted to tell him that I had delivered his car—or his wife's car—to the garage. I didn't meet him in Portland, so I went down and took the six o'clock train from the North Bank station. I had no business in Portland that day. I called up the Oregon Hotel where Stewart stayed when he was in Portland, and they said that he had checked out. That was just after I got in town. I had no idea as to

(Testimony of Carl H. Hayes.)

any other place to look for him except the hotel. I went down to the depot to take the train quite a little time before train time. I remember I got a shave and a shoe shine. I was killing time waiting for the train. I had an idea that Stewart would come and take the same train.

I don't remember being interviewed on April 27th by an insurance inspector by the name of Johns. I remember there were several insurance men down there who asked me questions, but I can't remember that man by name anyway. I don't remember saying to that man that I went down to take the six [179] o'clock train Stewart was not there, "But I knew he was coming so I got on the train." I don't remember that, but I did think he was coming and that he would be on that train. Stewart never at any time said anything to me about taking the automobile to Portland. I had no orders from him to take the car to Portland. Mr. Sardam told me that either Mr. Stewart or Mrs. Stewart wanted the car taken to Portland and delivered to the garage. Mr. Sardam told me that, I think, some time in the morning; the exact time I can't remember, probably between eight or nine o'clock. I met Mr. Sardam I think on one of the main streets of Kelso. I did not see Mrs. Stewart before I left, nor do I remember calling her up. Mr. Sardam told me to leave the car at the Haynes garage. Mr. Sardam had before that time given me instructions about the car; I don't remember them exactly, but I often took him out in the car where

(Testimony of Carl H. Hayes.)

he wanted to go and make calls, and if he came and asked me to take him I suppose it was arranged satisfactorily with the owner of the car, and I have taken him on a few drives that way. I was not employed by Mr. Stewart as a chauffeur, but when Stewart wanted to send any one out in the country, agents or collectors, he called on me to drive the car for him. I cannot say that I can now recall a single instance where before March 17th Mr. Sardam ever gave me instructions to take the Stewart car to any garage or to any particular place. I would often use the car. Of course I understood that Mrs. Stewart knew that I would take care of it and take to Portland. I wouldn't have questioned Sardam's right to tell me to take it there. I didn't question his right but did just what he told me to.

Before coming to Kelso thirteen years ago I was in the logging business and I was in that business some time after I [180] came to Kelso. I quit the business about three years ago. I am now in the sand and gravel business there and automobile business. I handle used cars. Mr. Stewart and myself were not interested in very many different ventures. I did quite a lot of business with the bank and borrowed some money from the bank that I used in buying and selling automobiles, but Stewart was not interested in any of that kind of work. We did have some business together, but very little. I do not remember of ever having anything to do with the selling of the

(Testimony of Carl H. Hayes.)

tract of timber land at Chehalis or Centralia about two years ago. I do not remember ever having been interested in any timber land, with any parties in Centralia.

The conversation which I have testified to as having taken place between Stewart and myself on the train on the evening of March 17th is all the conversation which took place between us that evening. I remember of going to Kalama the next morning after the disappearance of Stewart. I did not send any telegrams there to anyone. I sent no telegrams for Mrs. Stewart. Perhaps you mean the telegram that I telephoned to Kalama to see if there could be a reward for Stewart's body. The fishermen wanted to know what there was in it for them if they would go out and search, and I wired to some of Stewart's friends at Kelso and asked what could be arranged about offering a reward. I cannot remember whether I telegraphed Mr. Sardam about the reward or not. I didn't go to Kalama the next morning after Stewart's disappearance and send a telegram from there to California for Mrs. Stewart.

Somewhere along about a week after Stewart's disappearance I went to Portland and got the automobile, drove it back to Kelso and put it in Robb's garage. It remained there two [181] or three days and then I took it to Tacoma. I did not sell it in Tacoma; I left it here in Mr. Sardam's care. I don't know whether Mr. Sardam afterwards bought the car or not; I don't know what did be-

(Testimony of Carl H. Hayes.)

come of it. I heard it was sold. I do remember delivering the car at a garage, but I am not acquainted in Tacoma and can't recall the name of the garage. I think Mr. Sardam went with me to the garage, going there with me from some place down town in Tacoma.

I am not engaged in any very big business in Kelso. I am in the sand and gravel business. I have a motor truck which I operate there and haul sand and gravel. I don't think I owned an automobile when Stewart went away. I have none now. I have not had two touring cars up to the last month. I was not arrested for speeding two or three weeks ago. I was fined for speeding. The car in which I was riding at that time belonged to a man in Tacoma. I sold cars for two or three years in Kelso at different times for myself, bought them and traded them and sold some for other people on commission.

I went to Kalama to assist in recovering the body of Stewart. I went down several times and talked to the fishermen who were dragging the river. I don't know how many times I went down. I went out with Captain Reid on March 18th and searched the river bank up and down both sides of the river down as far as Cottonwood Island and around the island. I remember walking around the island with Captain Reid, he going one way and I the other. I don't remember any particular conversation with Captain Reid after we finished the circuit of the island. I did not tell Captain Reid

(Testimony of Carl H. Hayes.)

that Stewart didn't go into the river; that there was no use looking any more. I was down several times and asked him [182] if I could furnish him anything or help him in any way about the dragging and I gave him equipment I had gotten from Brady the grappler of Portland. Brady is an expert who drags rivers in locating bodies.

The time it takes a boat to go from Rainier to Kelso depends on the current in the Cowlitz River. It might have been an hour the night I came over. I don't know that one could make any better time by taking the boat from Rainier to Kelso than he would if he took the ferry from Goble to Kalama, but if the last mentioned route was taken one would have to hire a car at Kalama and drive from there to Kelso, and I thought inasmuch as I was in no particular hurry anyway I would go to Rainier and from there to Kelso. If one misses the four o'clock train which leaves Portland for Seattle, their next chance to reach Kelso is to go down the Oregon side of the river to Rainier and from Rainier to Kelso. A good many people who remain in Portland until five or six o'clock use that route in getting home.

I would say I was a very close and intimate friend of Stewart's before he went away. I wouldn't say that I as well as anybody in town would know when he would go and come. I didn't run Stewart's business altogether, you know. I do know that Stewart has come from Portland to Goble, crossed the river to Kalama and come

(Testimony of Carl H. Hayes.)

from Kalama to Kelso, but I couldn't say when such a trip was made. I have driven Mr. Stewart's car down there a few times and brought him home from Kalama where he made the trip that way. I have no reason for remembering the date. I am satisfied, however, that I have gone to Kalama for him within six months prior to March 17, 1921. He often, when he came that way, telephoned for his car to meet him. [183]

Redirect Examination.

(By Mr. LANGHORNE.)

I reached Portland somewhere between three and four o'clock in the afternoon. Shortly after that I called up from the Stevens' garage and asked the Oregon Hotel if Stewart was there, and they said he had checked out.

Testimony of Frank J. Sardam, for Plaintiff.

FRANK J. SARDAM, being first duly sworn, testified on behalf of the plaintiff as follows:

(By Mr. LANGHORNE.)

I live in Portland, Oregon, and have since about the first of August, 1921. Prior to that time I resided at Tacoma and had so resided for about two and one-half years. I am a life insurance agent. I went with the Northern Life Insurance Company in 1912. I was so engaged while living at Tacoma. I am still an agent for the Northern Life Insurance Company.

Q. Are you general agent for the State of Oregon? A. So called.

(Testimony of Frank J. Sardam.)

Q. For the Northern Life? A. Yes, sir.

The Northern Life carried two policies, each in the sum of five thousand dollars, on the life of Frederick L. Stewart. I wrote one of them. While Stewart lived in Kelso he was an agent for the Northern Life in Kelso. The policy which I did [184] not write was taken out about seven or eight years prior to March 17, 1921. The one I wrote was about two years old, I believe.

I was well acquainted with Fred Stewart and his family and mine were very good friends; we were next door neighbors for many years. I lived in Kelso off and on for about six or seven years. My occupation there was practically the same as it is now. I had some other interests there when I first came, but most of my time was given to insurance work.

I was in Kelso on the night of March 17, 1921, and had been there prior to that night about five days, arriving the Saturday night previous to March 17th. The reason for my going to Kelso was that Mrs. Stewart wrote and asked us to come down. We didn't know until we got there what the reason was. From the time we reached Kelso until the night of March 16th Mr. Stewart had spells of quietness which were uncommon. He seemed to be very nervous, more nervous than usual. March 16th was Wednesday. I saw Mr. Stewart on the night of March 16th after he came back from the bank. They had a session at the bank until a late hour and I saw him after that. He was very nervous and pallid. He looked to me like he was about to

(Testimony of Frank J. Sardam.)

collapse. That night after Stewart came back from the bank he remarked that he wanted to send the automobile to Portland and said he would have to see Carl Hayes in the morning and have him take it down, and he asked me if I would see Carl Hayes for him if he didn't see him. The car was to be taken to the Stevens' garage in Portland. I told Stewart that if I could find Hayes I would tell him. I saw Hayes in the morning some time about ten o'clock I would say, and told him what Mr. and Mrs. Stewart had discussed. I do not know when he took the [185] car. So far as I know, Hayes, prior to my conversation with him, knew nothing about Stewart's going to Portland, nor had he any previous knowledge of my wanting him to take the car to Portland until about ten o'clock on the morning of the 17th.

The next time I heard from Stewart after he left Portland was about nine o'clock on the night of March 17th. Mrs. Sardam and I were in his home visiting there. About nine o'clock the telephone rang. I went to the telephone; it was Stewart. He said he was at Goble waiting for the boat; that he would be home in about forty or forty-five minutes, or such a matter. He inquired about the health of the family and people who were there and about the little boy Sam and his wife. He wanted to know how Sammy and his wife were. The conversation was rather general. At the time his remarks didn't strike me as being anything more than a normal telephone conversation, until toward

(Testimony of Frank J. Sardam.)

the end of the conversation his voice kind of pitched up high and peaked out like a man was sort of backing away from the 'phone like. The unusual thing about his tone of conversation was that his voice sounded like he was trying to control it. It was suppressed in some way. The next thing I heard about Stewart after that conversation was when William Stuart, the prosecuting attorney who lives at Kelso, telephoned the Stewart residence. I answered the telephone and he asked me to come over to his house which was just a few doors away. No one telephoned me from Kalama. I went to Kalama that night about an hour or an hour and a half after the conversation with William Stuart, the prosecuting attorney. Possibly an hour elapsed between the time I had the conversation with Fred Stewart and the conversation which I had with William Stuart, the prosecuting attorney. William Stuart and Fred Stewart are [186] not relatives. They spell their names differently.

Cross-examination.

(By Mr. RUPP.)

I first went to live in Kelso in 1911 or 1912. I was then writing life insurance for the Northern Life Insurance Company. My father and other men interested in logging operations were logging at that time in Lewis County and our logs were coming down the Cowlitz River to the rafting works there and I was looking after the rafting of the logs. I first met Stewart in 1911 or 1912. I lived in Kelso for about two years after I came there in

(Testimony of Frank J. Sardam.)

1911 or 1912. I was not engaged in the logging business during all that time. The company with which I was connected was not a borrower at Stewart's bank, nor have I ever been a borrower from that bank. Stewart was an agent for the Northern Life. I do not know whether he invested money for them at that place. I did not know until afterwards that at the time of his death there was a mortgage of \$2500.00 payable to the Northern Life; that the money had been paid into Stewart's bank, but that the money had not been paid to the Northern Life. That has since been told to me, but I had no knowledge of it on March 17, 1921.

Stewart got home on the night of March 16th about midnight. Mrs. Stewart, my wife and myself had not gone to bed. When Stewart arrived, the four of us had a conversation which lasted about an hour. I presume I was in the bank a good deal on the day of the 16th. I made that my headquarters all of the time, back and forth. I was writing [187] insurance in Kelso on the 16th, but do not remember whether I wrote any policies on that date or on the 15th or 14th. I do not remember when I arose in the morning of the 17th of March. I don't remember how soon I got down town after I arose. I have no definite way of determining how long it was after I came down town when I saw Carl Hayes. I know that I met him about the middle of the morning. I told him that there had been a discussion about the automobile between Mr. and Mrs. Stewart. I told him what the

(Testimony of Frank J. Sardam.)

discussion was, and then told him to take it to Portland.

Q. Now, Mr. Sardam, you have been very much interested in this case, have you not?

A. Only as a friend. I naturally would be.

Q. Well, you have taken quite a little interest in this case?

A. What do you mean by that please?

Q. Well, let us start the other way around. I show you a letter dated March 23d, addressed to the Mutual Life Insurance Company and signed apparently by Frank J. Sardam, General Agent, and ask if that is your signature? (Handing witness paper.)

A. Yes, sir. However that "General Agent" should not have been put on there. That was the stenographer's mistake. I didn't write in the capacity of general agent for the Northern Life Insurance Company. That was strictly a personal request of Mrs. Stewart that I do those things for her.

Q. Now you wrote a like letter to the Prudential Insurance Company, didn't you?

A. I notified all the companies.

Q. You notified all the companies? [188]

A. Everybody, ours and everybody.

Q. I notice in this letter you say that some of the companies have agreed to make settlement in event that the body is not found if bond is furnished by parents, relatives and friends. "I can assure you that such a bond will be furnished you should you

(Testimony of Frank J. Sardam.)

require it.” Do you remember that part of it?

A. What is that again? Let me see that please.

(Paper handed to the witness.)

A. Yes, that—one of the attorneys said that the case—

Q. Just a moment. I ask you: That is there, is it not?

A. It speaks for itself there. It is there.

Q. Now will you tell me which life insurance company it was or which life insurance companies it was that had agreed if a bond was furnished they would pay?

A. No life insurance company that I know of agreed to do such a thing.

Q. And yet you wrote this letter—

A. I said “if” if you will note there, “if a bond is required” which is the thing that had been put up to me by the attorneys—

Q. Now, wait a minute. You wrote this letter under your own signature and said some of the companies had agreed to make settlement in the event that the body is not found—

A. I did no such thing.

Q. What?

A. No. I didn’t say they agreed to. I said “if” under certain conditions and I still say so.

Q. All right. Let us hear it again. What company was it or what companies was it?

A. You are trying to fasten something on to me.
[189]

Q. Yes. I am trying to fasten something on you

(Testimony of Frank J. Sardam.)

as having written these insurance companies in an endeavor to get them to pay something by your telling them that other companies had agreed. That is the purpose. I will declare that frankly. Now I want to know what company to your personal knowledge had agreed to make settlement of these claims in the event the body was not found and if a bond was furnished?

A. Why, no, certainly there was no bond furnished. The import of the letter and the intent of it was that if they required a bond before they would make settlement, that that was what Mrs. Stewart would furnish.

Q. What I am asking you now is what companies agreed? A. None.

Q. None. All right.

A. That is not what the letter says.

Q. Now the letter will speak for itself.

A. Sure it will.

I wired Mr. Langhorne on February 9th at San Francisco concerning this case. I cannot say whether the telegram I sent on February 9th to Mr. Langhorne concerning Fred Stewart's personal appearance was charged to the Northern Life Insurance Company or not. My stenographer might have done it. I did not. I sent no telegram personally to Mr. Langhorne. The telegram shown me dated February 9th was not sent by me. I would not say that the person who signed my name to that telegram was not authorized to sign it.

Q. Then did some one have authority to sign this telegram?

(Testimony of Frank J. Sardam.)

A. Oh, by inference. Your stenographer signs your name occasionally to letters. [190]

I didn't know that such a telegram was sent until it was sent. Probably the next day, I am not sure of the date. I was not in Portland the day it was sent. I think my stenographer sent the telegram. The information contained therein was not within her personal knowledge. The way she was able in the telegram to describe Stewart's personal appearance—that he had pale blue eyes and light brown wavy hair—was that my stenographer called up Mrs. Sardam over the telephone and secured the information. I didn't know that the telegram was charged to the Northern Life Insurance Company.

It was between eight and nine o'clock when Stewart telephoned me from Goble. I imagine it was nearer eight than nine. He said he would be home in forty minutes. When he first started talking to me his voice sounded rather high pitched. I knew when we reached Kelso the Saturday night previous to March 17th that there was trouble with the bank. It was about an hour after I heard from Stewart at Goble that I had the conversation with Stuart, the prosecuting attorney. About an hour after the last conversation I went to Kalama.

Mrs. Stewart was not living at my home in Portland on February 9th at the time the telegram was sent. She has been in my home in Portland since March 21, 1921, once or twice since I am sure. Before I went to Portland I was living at Tacoma and Mrs. Stewart visited us once at Tacoma since

(Testimony of Frank J. Sardam.)

March 17th, if I remember right. I do not remember how long she stayed.

I sold the automobile which Mr. Hayes drove to Portland. [191]

Redirect Examination.

(By Mr. LANGHORNE.)

I secured, net, to Mrs. Stewart for the automobile \$1490.00. When the bank at Kelso failed I had on deposit there six or seven hundred dollars. I got Stewart's grip when I went to Kalama. I found it at the Northern Pacific station which is right at the slip. Someone had opened it. I took it to Kelso. I would explain the matter of the accident policy.

There is a perforated card attached to these policies and I believe it is customary when they buy such a policy at the station to tear off and mail the perforated card to the beneficiary, and that is the one which Mrs. Stewart received. It was not found in the grip.

It was thereupon stipulated by and between counsel that an accident policy of the kind just mentioned was issued to Stewart on March 17th at the time he bought his railway ticket.

(Mr. Sardam continued:) I am the general agent for the Northern Life Insurance Company in the State of Oregon and my business calls me away from Portland frequently. I know that Mr. Langhorne, one of counsel for plaintiff, was in California in February at the time counsel for defendants were taking depositions of witnesses in California.

(Testimony of Mrs. Frank J. Sardam.)

I did not receive a telegram from Mr. Langhorne, but found it on my desk when I came home. I also found the telegram of March 9th herein referred to and which is an answering telegram.

Mr. RUPP.—In order to make it intelligible I will offer this telegram. [192]

Mr. LANGHORNE.—I am going to offer it in just a minute, myself. That is all, Mr. Sardam.

Testimony of Mrs. Frank J. Sardam, for Plaintiff.

Mrs. FRANK J. SARDAM, being first duly sworn, testified on behalf of the plaintiff as follows: (By Mr. LANGHORNE.)

The knowledge I have concerning this telegram which was sent to Mr. Maurice A. Langhorne at the St. Francis Hotel, San Francisco, on February 9th is that Miss Lockwood, Mr. Sardam's stenographer, called me up over the telephone and said a telegram had come from Mr. Langhorne and asked me what she should do about it. I asked her to read it to me and I said it ought to be answered, and she said, "I don't know how to answer it." I said, "I think I can describe him." And she said "How shall I send that now"? and I said, "You better send it C. O. D. because Mr. Langhorne is paying all the expenses."

Testimony of Dr. F. A. Byrd, for Plaintiff.

F. A. BYRD, being first duly sworn, testified on behalf of the plaintiff as follows:

(By Mr. LANGHORNE.)

I live at Olympia, Washington, and I have lived there since April 1, 1919. I am the Chief Medical Advisor to the State of Washington. I have been engaged in the practice of [193] my profession since 1899. I am a graduate of the Missouri Medical College of St. Louis, Missouri. I have lived in Cowlitz County from January, 1904, until I was called for army service about January 1, 1918. I lived in Kelso during the fourteen years I lived in Cowlitz County. I was county coroner of that county for a while; I was elected one term and filled out an unexpired term. I held the office three and one-half or four years. I think I may have been elected twice and filled out an unexpired term; I am not absolutely positive. Practically the whole time I was in Cowlitz County I was surgeon for the Hammond Lumber Company; they had camps along from Oakpoint up as far as Carrol's Point, which is over a distance of thirty miles, I judge, and I had a boat that was partly furnished by the company that I might go up and down the river and look after their injured men, and I was on the river a great deal during the time I lived in Cowlitz County. I would say that the Columbia River is more than a mile wide between Goble and Kalama, and the river at that point is very deep because the boats that can come into the Columbia River can

(Testimony of Dr. F. A. Byrd.)

go up the channel there. The largest warships afloat which can get into the mouth of the Columbia River go up there.

Q. While you were county coroner and while you were down there practicing as a physician did you take any note or have you any knowledge as to how many persons were drowned in the waters of the Columbia and Cowlitz Rivers whose bodies were never recovered?

A. I couldn't state as to the exact number, but there were quite a large number that were never recovered. I can recall of one instance in the Cowlitz River. I remember very distinctly of a smelt fisherman by the name of [194] Galloway dropped off the back of his boat, slipped off, not to exceed 25 feet from shore, and we never recovered him and that was in water not to exceed 15 or 18 feet at that time, but quite swift.

I remember a number of other instances, just how many I could not say, of bodies that I had records of. I kept a scrapbook and I put all the clippings from newspapers in and in my file so we could use them for identification in case the bodies came in the big boom at the mouth of the Cowlitz River because the current hangs on the Washington side, striking Carrol's Point and leaving the Washington side below Mount Solo, and it is within that district that we used to get most of these bodies.

I remember a case of where a girl named Mabel Londo and a man named Parker Day were driving at high speed across Columbia Slough. There was

(Testimony of Dr. F. A. Byrd.)

a curve in the bridge and they didn't make the curve—went through the railing—and the automobile was found the next morning. Neither of the bodies was found. Many months after that I and an Indian got the girl out of a tree on Cottonwood Island. The bridge which I have just referred to is just opposite Vancouver, close to where the Union Meat Company's plant is now, and from Vancouver to Carrol's Point would be something like forty miles, and I got her off of Cottonwood Island, right opposite of Carrol's Point. She was up in a tree. She had come in there on the high water. The water receded and left her up in the tree. The body of Day, so far as I know, was never found. This accident happened while I was living in Cowlitz County and during the time I was County Coroner. I lived in Kelso seven or eight years after this particular accident. [195]

I have tried on four different occasions to resuscitate and bring back to life the bodies of persons who have fallen in either the Columbia or Cowlitz Rivers; I never succeeded. One of the bodies had been in the water about eight minutes, another about thirty minutes and the other two about ten minutes. The reason it was impossible for me to resuscitate these bodies was that the waters were so cold that the capillary circulation coagulates immediately and you can't re-establish the circulation by virtue of the coagulation in the capillary circulation.

(Testimony of Dr. F. A. Byrd.)

The COURT.—Is that a coagulation caused by the coldness of the capillaries?

The WITNESS.—It is a coagulation. I tried to bleed some of these patients and I couldn't get anything from them at all. The blood would not flow, and it should not do that so shortly after death.

I was acquainted with and a personal friend of Fred Stewart's during the entire period I lived in Cowlitz County. I corresponded with Stewart before I left Texas and I came directly to Kelso from Texas and the same day I arrived in Kelso I called on him at the bank. We were bachelors together for a number of years until I married first, and shortly after that then Mr. Stewart married. We lived in the same block. We bought a block and he had half of it and I had the other.

I have gone to the beach with Stewart in the summer time. Stewart did all his swimming on shore. He never went in the water.

I do not think that if a person, heavily clothed, went [196] in the Columbia River on the night of March 17th, a thousand feet from shore, the river being 12 feet out of the banks and the water cold, as cold as I have described, that he could possibly survive. I think it would be too far for him to attempt to swim even if he was a good swimmer. I know something of the condition of the bottom of the river. There was a little child fell off of the boat at the mouth of the Cowlitz River at Moore's Mill, and there was a diver by the name of Brady from Portland came down.

(Testimony of Dr. F. A. Byrd.)

The water is about 30 feet deep I think, and Brady told me that when he came to the child the child was standing upright leaning with its arms across some big heavy trees that were in the bottom and that he had been around this child a half a dozen times and could not find it because it was in between these cross trees and it was standing upright with just its head in its arms up over the shoulders and that the bottom of the river was just one mass of trees and stumps.

Another time at Oakpoint a lady fell off a launch just in front of the Hammond Lumber Company's store and a diver (I don't remember his name) came, I think, from Astoria and searched a day and part of an evening. He found this body eventually and he told me when he came out it was an old forest, looked like it had been at some time a canyon and the trees were standing and the stumps were there, some of them were ten foot snags, some of them 20 or 30 feet, because the water is very deep at Oakpoint.

Another case I remember a young fellow by the name of Fielder fell off of one of the towboats just above Kalama a little ways and they fortunately found his body by dragging, but he was fastened behind a stump and they got the stump and the body. I don't know whether they pulled the stump out at [197] the same time, but he was snagged to the stump so they told me.

I also remember an Indian who was fishing up above Cottonwood Island. I don't remember his name, but we never got this Indian boy.

(Testimony of Dr. F. A. Byrd.)

Cross-examination.

(By Mr. KEENAN.)

The manner in which I got acquainted with Stewart when I lived down in Texas is this: An engineer in a cotton gin named Nelson worked for an uncle of mine in Texas, and he went to Washington a number of years ago and run an engine for one of the shingle mills in Kelso. He returned to Texas. In a conversation with him one day he found I was coming out to Washington, altho I had no intention of going to Kelso at that time. Nelson gave me Stewart's name and the name of Judge Daniel Kelley. I wrote to these two gentlemen and as a result of the correspondence with them I came direct to Kelso. I secured this position that I referred to with the lumber company in the latter part of the first year or the first part of the next year after I reached Kelso. I did that work until I was called for army service. I was in the army from January, 1918, until I went with the State in 1919. Since that time I have been with the State. During all that time I was in Kelso with the exception of a few months in the east taking post graduate work and the time I was in the army, I had contracts with logging companies for their medical service. I also did a general practice. I am now the head of the Medical Department of the Department of Labor and Industries. That department used to be called the Industrial [198] Insurance Department. I have charge of the work of every

(Testimony of Dr. F. A. Byrd.)

man that is injured in industries in the State of Washington that carries a hazard.

Q. Have you any idea the number of persons that were drowned in the proximity of Kelso since you came from Texas whose bodies have been recovered?

A. I have not seen the books, no sir, since I turned them over to my successor, but there was quite a large number of them because we had quite frequently a case, or to make a guess at it I would say I must have had probably forty or perhaps fifty, there might have been more than that, in that length of time that were recovered.

I was in Kelso from the latter part of January, 1904, until in January of 1918. There were lots of bodies that were recovered and there were lots of them that were not recovered. I think it would be safe to say that there were more recovered than not. Of the instances which I mentioned only one was drowned in the Cowlitz River. I remember in addition to the case of the man and girl who were drowned in the Columbia River at Vancouver and the Indian boy at Cottonwood Island, another case where three persons were drowned at the falls on the Willamette River just below Oregon City. One of the bodies was recovered but the other two I never heard of them being recovered. The drowning in that case took place on the Willamette River but the bodies come out in the Columbia River. I cannot say how much of an effort was made to recover the two bodies just referred to. I know,

(Testimony of Dr. F. A. Byrd.)

however, that this couple that went over the bridge near Vancouver, they had a diver employed and he found the automobile. He hunted for the bodies [199] but did not find them. I can't say how much of a hunt took place as I was not present.

Q. Did you ever hear of a drowning in the Columbia River from Vancouver down to its mouth where the river was searched by every known means for eighteen days by some fifteen or twenty different people and boats; did you ever know of a body being searched for like that before?

A. Well, I don't know as to the number of days. I remember some of the cases where they dragged for bodies and had divers, but they didn't get them in the upper river. I remember this particular instance very distinctly of the case I referred to in the Cowlitz River that at that particular time there was a number of smelt fishermen and a lot of the citizens around town went and searched for the body, but they never got it.

I couldn't tell the number of days the search continued as the incident took place long ago. I know there was a diligent search made for the body. The forest I have talked about in the bottom of the river was in the Columbia River, right opposite Oakpoint. They fish on the Islands just in front of Oakpoint except in certain seasons of the year, and then they use what they call floaters. I know about the fishermen in the proximity of Kalama employing divers to go down there and pull up snags for the fishing season.

(Testimony of Dr. F. A. Byrd.)

Q. Do you think the men went down there and pulled up snags?

A. No, that is too deep for fishing. I have seen them do that near Kalama, but the water is shallow there. [200] That is on the island in front of Kalama.

Q. Don't they fish across the main channel of the Columbia?

A. They have certain grounds that they call drifting grounds and the fishermen go out there and take away the snags. They put down a large drag and then it hangs up they drop a buoy and after they get all these snags marks then they go back and pull them and clear off these grounds so that they can drift down through that district or that particular piece of ground they clear, and they use what they call a diver. It is a net that floats right alongside the bottom.

Q. Which side of the river is on that?

A. It is in the channel.

Q. Not right in the center?

A. No. The channel down there is not in the center.

Q. How far out from the Washington side do they do that combing for the snags at Kalama?

A. At Kalama the channel is over on the other side of the river from where this body found in—

Q. I am asking how far is it from the Kalama shore where they do this combing.

A. There is an island right in front of Kalama. I have forgotten the name of it. There used to be seining grounds in front of that island. I don't

(Testimony of Dr. F. A. Byrd.)

recall seeing any drifting ground right along Kalama there except *that floaters*. They might have used divers there. I am not positive about that. But I have seen floaters come down through there. I know just below this island on the Oregon side a number of men from down around Kelso used to go up there to fish and they cleared a ground there in the channel, but that is on the Oregon side. [201]

I have never succeeded in resuscitating any person who fell in the Columbia River in the State of Washington. I have resuscitated two people from drowning in Texas, in warm water or in little lakes. These two cases were white children. I do not recall ever having seen children or adults swimming or bathing in the Columbia River at Kalama and vicinity.

The method I used to resuscitate is first I drain them, open their glottis to see that there was a free passage of the air. I have even gone so far as to pass a rubber tube down into the lungs and breathe and exhale from my own lungs into them to try to get them back. I have used hot water. I breathed my own breath into one young chap in Kelso one evening for more than an hour. He was in the water five minutes. And he was placed immediately into a warm bath and he was given hypodermics and I gave him my own expiraton and respiration down into his lungs through a tube, and he was not brought back. I don't know whether that had anything to do with his not being resus-

(Testimony of Dr. F. A. Byrd.)

citated, but it certainly did get air into his lungs. Oakpoint is a little better than twenty or twenty-five miles down the river from Kalama.

The COURT.—You spoke about Mr. Stewart not swimming when you were down at the beach. You went down to the beach you say?

The WITNESS.—Yes, sir.

The COURT.—You swim, do you?

The WITNESS.—Yes, sir.

The COURT.—Was there anything said by him to you regarding his swimming?

The WITNESS.—Yes, sir; he told me on occasions that he could not swim, and I know one time when we went to the beach [202] I insisted on his going in with me—it happened to be a very warm day and I insisted on him going in the beach with me, and he wouldn't because he couldn't swim.

Redirect Examination.

(By Mr. LANGHORNE.)

The Cowlitz River is very much smaller than the Columbia River.

The COURT.—In high water is the Columbia swift?

The WITNESS.—Very swift; yes, sir.

Testimony of William J. Pomeroy, for Plaintiff.

WILLIAM J. POMEROY, being first duly sworn, on behalf of the plaintiff, testified as follows:

(By Mr. LANGHORNE.)

I live at Kalama and came there in 1893. On

(Testimony of William J. Pomeroy.)

March 17, 1921, I was captain of the ferry-boat, the launch "Queen" plying between Kalama and Goble. The photograph handed me is a fair and accurate representation of the part of the boat shown in the photograph. This side here was open on that side. It was open from here on this side that day. It was not sealed upon the outside there.

(Whereupon the photograph referred to was offered in evidence, without objection, and the same was received and marked Plaintiff's Exhibit 9.)
[203]

I knew Fred Stewart of Kelso and had known him a good many years prior to March 17, 1921. I was pilot on the boat on the night of March 17, 1921. I was running the boat at the wheel. My station was here in the pilot house. The photograph now shown me is a fair and accurate representation of as much of the boat as is shown.

(Whereupon the photograph referred to was offered in evidence, without objection, and the same was received and marked Plaintiff's Exhibit 10.)

I had been pilot on this boat for six or seven years before the 17th of March, 1921. I remember the last trip I made across the river on the night of March 17, 1921. The train was due at Goble at 8:54; it was a little late, maybe about eight or ten minutes. I saw Mr. Stewart on the boat that night. I saw him as the boat was pursuing its way across the Columbia River; he was right in front of me on the port side. There were six passengers on board the boat that night; six passengers, Mr. Shotswell

(Testimony of William J. Pomeroy.)

the helper and myself. I know who the passengers were but don't know the names of all of them. There were three cruisers, Mr. Chisholm, Mr. Stewart and a drummer. I saw Stewart as the boat was pursuing its way across the Columbia. He was right in front of me on the port side. On the way across Stewart handed Mr. Shotswell a dollar. Mr. Shotswell handed the dollar to me and I gave him the change. Mr. Stewart kind of hesitated, put the change in his pocket, stepped over the pack sacks which the cruisers carried on their backs and which were piled right in front of the pilot-house, and walked around on the starboard side and went into the cabin. Before Stewart [204] stepped over the pack sacks Mr. Chisholm was inside the pilot house and was standing up behind me. Stewart as he walked around was walking at a pretty good gait. I should judge at the time Stewart disappeared from my sight we were in about the center of the river. We were this side of the Government light.

Q. How long does it take you to cross the river?

A. About, well, the schedule is about ten minutes, nine or ten minutes.

The river that night was, I should judge, about ten or twelve feet higher than normal. The boat when we reached Kalama pulled up to the usual place where I discharged the passengers. The photograph just handed me is a fairly accurate representation of the condition that existed there that night when the boat pulled up to the railing to

(Testimony of William J. Pomeroy.)

let the passengers off. Two boats are laying side by side.

(Whereupon the photograph just referred to was offered in evidence, without objection, and received and marked Plaintiff's Exhibit 11.)

When the boat got to the railing the passengers went ashore. I was standing in the window. The passengers had to pass by me or jump over the railing. The passengers all passed out but Stewart. I noticed his absence. I raised the alarm. I hollered up to Captain Reid and asked him if Mr. Stewart had come on to the slip. Captain Reid said "No, sir." I then took my spotlight and searched the boat thoroughly. I couldn't find him. He left his grip in the pilot-house and [205] I took it up and check it in the depot. The Captain immediately telephoned to the sheriff and the sheriff came and we went down the river and looked for him to see if we could find a coat, hat or something. The sheriff put in his appearance about ten minutes after Captain Reid telephoned for him. There was no one with me when I searched the boat. Mr. Shotswell was standing outside. The little cabin where the passengers go and sit down I should judge to be about twelve feet from the partition. Referring to the little platform on the rear, I should say there is about four feet between the door and the rail. There is a light in the cabin right in front of the stove about three feet from the rear door. This light is a six candle power, five watt, light. I recognize the photograph just shown

(Testimony of William J. Pomeroy.)

me. This photograph shows the slip that leads up to the land. There is a light at the top of the slip and there is one down almost to the bottom. Both lights are 100 candle power. The landing is well lighted. There was no way for anyone to get off the ferry-boat without jumping.

Q. Explain what you mean by that to the Court.

A. In climbing over he would have to come close to me and it is about three feet across.

Q. Across to what?

A. To where he would have to get across or else come around by me. There is a space.

Q. Now, when the boat got to the landing did Mr. Shotswell get out and hold the boat fast?

A. He was there with a line and tied it up on a cleat.

Q. Did he tie it up with a line or—

A. Yes, sir. [206]

Q. —did he hold it? Shotswell was facing which way then when he went out and when he tied the boat up, if you know?

A. Well, I couldn't exactly say which way he was facing.

(Whereupon the photograph above referred to was offered in evidence, without objection, and received and marked Plaintiff's Exhibit 12.)

Cross-examination.

(By Mr. KEENAN.)

I saw Mr. Stewart get on the boat at Goble. He was on ahead of the other passengers. I think I

(Testimony of William J. Pomeroy.)

was about half-way across the river when he paid his fare. The fare is twenty-five cents. Stewart gave Mr. Shotswell a dollar and I gave him back seventy-five cents. Mr. Stewart paid his fare shortly after the other passengers paid their fares. Shotswell had turned in all the other fares before Stewart paid his. Then Mr. Shotswell went back to where Stewart was and Stewart paid afterwards. Stewart was standing out in front of the pilot-house when he paid Mr. Shotswell. He was in plain view of me at the time when he handed Shotswell the dollar.

Q. Were some other passengers standing there to see it also? A. Yes, sir.

Q. How many passengers were there to see him give that dollar over to Shotswell?

A. This here traveling man and one of these cruisers and Mr. Chisholm. [207] The traveling man remained in front of the pilot-house all the way across the river.

Q. And one of the cruisers stood by him also all the time coming across?

A. He didn't stand by him.

Q. Stood by the pilot-house? A. Yes.

Q. One of the cruisers was out there all the time you were coming across?

A. I think he was.

When I am coming into Kalama I have to watch my moorings to see that the little boat doesn't strike the piling and I of course do the piloting to get the boat in. That night I was tying the "Queen" up

(Testimony of William J. Pomeroy.)

to the ferry "Elf." As we ran alongside Shotswell got out and throwed the rope around the cleat. At the time we landed the wind was blowing downstream. When the wind blows downstream it makes the water rough, but I have seen it rougher than that. If the wind is blowing upstream then it would be rough.

Q. But blowing down it does not change the surface unless something runs against it?

A. It changes it.

Q. And of course as you landed and as the rain was falling and the wind was blowing the passengers naturally hurried off and up the slip, didn't they? A. Yes, sir.

Q. And of course, Captain, on that night, the same as other nights you never count the passengers when they get off do you? [208]

A. I generally know who is on.

Q. I mean now you do not as a matter of fact stand and say, "One, two, three, four, five," do you, when they get off? A. I just take a glance.

Q. Yes. You sort of know intuitively the people that are on there without counting them?

A. There ain't so many; there ain't so big amount of travel.

Q. But as a matter of fact, Captain, you never count them as they get off?

A. Sometimes I do. Not often.

Q. What would be the occasion for your counting them occasionally?

(Testimony of William J. Pomeroy.)

A. I count them there to see how many tickets are sold to check up with the cash.

Q. There was not any occasion to do it that night because you only had six? A. I knew.

Q. You knew just how many got off without counting?

A. That is true. I seen them before I left the shore. I knew how many I had.

Q. Now, Johnny Chisholm, how does he compare in size with Stewart? (Mr. Chisholm, will you stand please? A gentleman stood.) In height I mean; in height and size.

A. Well, in height and size there ain't much difference.

Q. And Johnny walks pretty fast too, doesn't he?

A. Sometimes.

Q. And Stewart walked pretty fast sometimes too didn't he?

A. He did that night, yes. [209]

Q. He did that night. Now Paul was busy tying and holding the boat as the passengers jumped off, of course, wasn't he?

A. Well, he was standing right there at the rail.

Q. I say he was busy with the rope tying and holding the boat?

A. No, he was not busy standing holding the rope all the time.

Q. I will put it another way. Now, when do the passengers get off in relation to your going up to the slip?

A. Well, in relation to the going up to the slip,

(Testimony of William J. Pomeroy.)

you come in and land and make the boat fast and then they start piling off.

Q. Yes, as a matter of fact they pile off before you stop, don't they? A. Well, I have seen cases.

Q. And if it is a stormy, windy night they are anxious?

A. Oh, if it is a stormy, windy night you never see them making a break.

Q. Was it so stormy and windy that night that they could not get off the boat until you tied it right up snug? A. No, not that stormy.

Q. So it is customary that the passengers that come over there to jump right off the little boat just as soon as you get up to the slip or up to the ferry, if you tie to it, and don't stay there and visit with you then?

A. Some of them just step ashore. They don't jump. There is no occasion for them to jump.

Q. You never saw any of them jump? They step off lively?

A. Yes I have seen them step off. [210]

On that night I think that Chisholm got off and went up the slip right behind the cruisers. The traveling man followed about the same time. I believe that Chisholm and the traveling man followed the cruisers up the slip. The cruisers' pack sacks were right in front of my pilot-house. The cruisers did not come out before the boat landed, get their packs together and put them on their shoulders. two of the cruisers were inside, one was out there. Of course, he picked up his sack. The other two

(Testimony of William J. Pomeroy.)

came out afterwards, just as I was coming in. As soon as I stopped they had their sacks ready to go.

Q. Plaintiff's Exhibit 11 being a photograph of the "Queen" and the ferry-boat to which she was tied, has been taken looking from the front of the "Queen" backward.

A. Yes, sir. He was standing on the left when that was taken.

Q. Now I am showing you this railing, is that the railing on the "Queen" or on the "Elf"?

A. They are both there together. That is the end of them. Here is the end of them.

Q. Now that railing, the railing on the "Elf" and the railing on the "Queen" are almost exactly the same height? A. Yes, sir.

Q. Both railings were jammed right up together there at that point?

A. No, sir. The picture shows it that way, yes.

Q. How far apart were they?

A. Right there they were three feet apart.

The COURT.—Three feet apart on this night?
[211]

The WITNESS.—No, sir. Every time I land there.

I do not mean there is any structure which keeps the boats apart. The boats where the cleat is were together—the boats were not straight on the side. The railing is right at the end of the cleat, or to put it in another way, the cleat is at the end of the railing. The cleats were about two feet apart when we tied up the two boats, and the railings then were

(Testimony of William J. Pomeroy.)

two feet apart up at that point. Of course, they would get farther apart as we went back. The railing is about 2 foot six in height.

(The witness was then shown Defendants' Exhibit "B" for identification. Defendants' Exhibit "B" for identification. is a fair picture of the two boats from the rear.)

I was in the pilot-house when I pulled in.

Q. And if a man had gone around the cabin on the "Elf" to the place where a man is now standing whose picture was taken, could you have seen him from where you were in the pilot-house?

A. Yes, sir.

Q. Just where the man is standing now?

A. I couldn't look through that house, no.

Q. That is what I am asking you. You couldn't see him, could you?

A. No, I couldn't see him on that other boat; no sir, I couldn't see him.

Mr. LANGHORNE.—He understood you to say could he see him when he got over there.

A. (Continuing.) —I could see him when he got over that. [212]

Q. But my question is if a man was standing where that man apparently was standing when the picture was taken you couldn't see him from the pilot-house, could you?

A. No, I couldn't see him.

Q. Now when you were in the pilot-house which way were you looking? A. Up this way.

Q. Up toward the top?

(Testimony of William J. Pomeroy.)

A. Around this way. I was standing—the house is in a circle and I was standing leaning out this way.

Q. In relation to your pilot-house where did the passengers leave your boat that evening?

A. Right across the front of these two boats. That is not the position the boats set in.

Q. The passengers that night left your boat in front of the pilot-house? A. Yes, sir.

Q. They all went off that way? A. Yes, sir.

Q. And that is the direction in which you looked?

A. No, sir.

Q. Which direction were you looking?

A. I was looking right around this rail here to watch whether they all came out.

Q. You say they came out in front of the pilot-house?

A. They do have to pass the pilot-house or else climb over that rail. Where are they going to go when they climb over that rail?

Q. I haven't got to that yet. You are anticipating me. Now there is a space between the pilot-house and the cabin, isn't there? [213]

A. What do you mean; a walkway?

Q. Yes. A. Yes.

Q. I believe you said it was about four feet?

A. No.

Q. How much is it?

A. A little over two feet; I guess two feet and a half.

Q. And there is a door on either side of the cabin

(Testimony of William J. Pomeroy.)

going in from that walking space into the cabin isn't there? A. Yes, sir.

Q. Now then where did the passengers come from as they left your boat; did they come through that space between the pilot-house and the cabin or were they out on the side here ready to alight or ready to land as soon as you tied up to the "Elf"?

A. They came out this door.

Mr. KEENAN.—I will get another picture.

Q. How much space is there between the pilot-house and the railing on the side?

A. You mean the space clear to the side of the boat?

Q. Yes, where people would stand?

A. I judge a little over two feet.

Q. Captain, I am calling your attention to the testimony that the space between the pilot-house and the cabin on the boat "Queen" is between two and two and one-half feet?

A. I don't get you on that.

Q. I am asking you about the space here?

A. You mean the space between the two boats?

Q. No, I don't. This is your pilot-house?

A. Yes, that is the pilot-house. [214]

Q. And here is the cabin? A. Yes.

Q. And you say there is a space in there of two and one-half feet between the two structures?

A. Well, where you walk around on the boat.

Q. That is what I am asking you.

A. Yes, where you walk around.

Q. Now, where else would you expect to see the

(Testimony of William J. Pomeroy.)

passengers as you landed that night excepting to the side of your pilot-house there as they stood waiting for you to land that they might step off?

A. You can see all around. You can see that door.

Q. I am not asking you about seeing there. Where would you expect to see the passengers to stand that night and where did they stand that night as you pulled up to the "Elf"; didn't they stand right up to your pilot-house ready to step off?

A. Some of them were there and some of them were in the cabin.

Q. You just said that the cleat was at the end of the railing? A. Yes.

Q. And that even that was two feet away and that where both boats touched was towards the point of both boats, up toward the point of the "Queen"?

A. No, you have got me wrong.

Q. All right.

A. Where these cleats come together here I should judge there is about two feet, but between the boats here that way is about—

Mr. KEENAN.—That is the rear he is speaking of. [215]

A. —Is about three feet.

Q. I understand that, but answer this question.

A. The boats are together right where the cleats are, the boats are together.

Q. Tell me what part of the "Queen" was the nearest to the "Elf"?

A. The nearest to the "Elf"?

(Testimony of William J. Pomeroy.)

Q. Yes, what part of the "Queen" was the nearest?

A. The "Queen" I should judge would be about a foot and a half from that cleat.

Q. On the "Queen" there is a timber around towards the water line projecting out to protect your boat from striking the piling and other obstacles as you land, isn't there? A. Yes, sir.

Q. It goes clear around?

A. Just a deck, that is all.

Q. How far is that out—

A. The deck overhangs I should judge about 14 or 15 inches.

Q. I am now calling your attention to Plaintiff's Exhibit 9 and I am directing your attention to a projection near the water line here of the timber that goes clear around. How far out does that project from the side?

A. About three inches.

Q. Did you measure it?

A. Well, it is the width—it ain't much wider than that one before.

Q. Did you measure it, I say?

A. Well, the whole thing measured I think about four inches.

Q. Yes; not three but four inches then, isn't it?

A. Well, the cabin setting out on top of part of it.
[216]

Q. And on that night there was no glass in the windows; they were open with canvas on them?

A. All of them.

(Testimony of William J. Pomeroy.)

The COURT.—What was that answer?

Mr. KEENAN.—No windows in. It was canvas. These openings look like windows. There were no windows in. It was canvas.

Mr. LANGHORNE.—Where was that?

Mr. KEENAN.—On the side.

Mr. LANGHORNE.—Oh, not in the pilot-house.

Q. How far was this first opening that looks like a window from this rear platform; how many inches? A. Which is that?

Q. From the first opening that looks like a window to— A. How far over there?

Q. How far over there?

A. That there it seems to me is about three feet.

Q. On the right-hand side of the boat the window was much nearer, wasn't it?

A. No, they were both the same.

Q. Don't you recall telling me when I interviewed you some time ago that this space was boarded up since then?

A. Well, that is on the starboard side.

Mr. LANGHORNE.—The right side you mean?

The WITNESS.—Yes, sir.

Mr. KEENAN.—On the right-hand side?

The COURT.—I understood him when the picture first went in that he said this was what was boarded up.

The WITNESS.—This one right here running from here to there is boarded on the inside. They didn't have any boards to put on them and it has been put on since. [217]

(Testimony of William J. Pomeroy.)

Q. It was open then?

A. It was open then, but it was not open clear through; it was boarded on the inside. You see it is boarded on the inside and outside, but the outside was not boarded. There is two inch and a half studding goes up between.

Q. What do you say, Captain, about a person stepping over this rear rail at the rear platform, holding onto these windows here and walking on this timber projection, which you say is four inches wide; could that be done?

The COURT.—You say “walking forward,” and yet you draw your finger back on the boat.

Mr. KEENAN.—Well, walking forward.

A. It might be done.

Q. You have done it yourself, haven't you?

A. No, sir. The only ones I have seen do it I will tell you, the people there that had been in swimming.

Q. What is this little—

A. That is a chock; it is a cleat inside the cabin to tie the boat.

Q. Didn't you ever have occasion to go from the front or from the rear platform here to attach a rope onto this? A. No, sir. I do it all inside.

Q. You could do it if it was necessary, couldn't you? A. No, sir.

Q. Why?

A. Because how am I going to hold on.

Q. Couldn't you hold onto the windows?

(Testimony of William J. Pomeroy.)

A. Yes, but how am I going to make that line fast?

Q. But you could walk from one end to the other, holding on to the windows if you wanted to? [218]

A. I wouldn't tackle it.

Q. You could do it, couldn't you?

A. I suppose if I was forced to do it I would, but I wouldn't tackle it.

Mr. LANGHORNE.—Just to clear up, that would be the right side of the boat as it came in to the dock, wouldn't it; that would be the side lying towards the Oregon shore?

The WITNESS.—That would be the side, yes, towards the Oregon shore.

The COURT.—You say you would have only about three inches of footing?

The WITNESS.—Right here, yes, sir. That is what they call a guard and it is about three inches wide.

Q. You said also it was 'four inches. Now, explain what you mean.

A. Well, it is four inches, but the boarding is put up on top of it, so that it would leave it stick out here about three inches, so that is all you would have to stand on.

When I landed that evening some of the passengers went off the boat faster than others; they did not rush off. Mr. Stewart's bag was just there behind; I didn't have to look for it. I missed Stewart before I noticed the bag. He left it there and he didn't go ashore and I noticed it. He didn't

(Testimony of William J. Pomeroy.)

come ashore so I knew it. I told Shotswell that Mr. Stewart's grip was there. I then called up to Captain Reid and said, "Jack, did you see Stewart come up the slip"? He said "No." I said, "He was on board." I said, "His grip is in the pilot-house." Then the Captain went up and telephoned [219] to someone. Then I and the deputy went to the hotel to interview these three cruisers. I did not go into the room; I stood at the door. The deputy sheriff Hogett was with me. The sheriff himself did not go with me, it was his son. There were only two of us at the door. I asked them if that fellow that walked back after went out the other door and they said "Yes." I asked them nothing more. They said he went out the door and didn't come back. I believe the deputy sheriff asked the same questions I did and received the same answers. No one of the cruisers at that time told me that they followed Stewart out of the rear door of the cabin. My purpose in going up there was to get such information as I could from them as I had to make a report.

Captain Reid is the owner of the boat. He was not on the boat but he was at the head of the slip, the only person I remember being around there, and the people on the boat. There was nobody on the "Elf."

The COURT.—After you missed Stewart did you go around the "Elf" before you went up the slip? A. I went around my boat.

The COURT.—You went around your boat?

(Testimony of William J. Pomeroy.)

The WITNESS.—The line was about eight feet between them, so he would have to jump about eight feet to get ashore.

The COURT.—Did you speak to Stewart that night on the boat?

The WITNESS.—Yes, sir. I spoke to him when he got aboard at Goble. I did not speak to him afterwards. I didn't go up after the baggage at Goble; I stayed on the boat.

There is only one slip at Kalama from which anybody could go up to get on top. The light that is down below in the slip [220] would be about forty feet from my pilot-house. The light is in front of the windows of my pilot-house. There was a light at the foot of the slip and one at the top. My pilot-house when I stopped was just about opposite the slip about like it is in the picture.

Redirect Examination.

(By Mr. IMUS.)

Captain Pomeroy, you were shown a picture yesterday by the attorney for the defense and which you stated did not show exactly as the boats were landed. You may explain to the Court in what way the picture did not show the true condition of the boats as the relation of the "Queen" to the "Elf" the one that you were examined on yesterday.

A. The one I was examined on yesterday you see they dropped down.

Q. They were lowered out. And as to the stern of the boat?

(Testimony of William J. Pomeroy.)

A. As to the stern of the boat, the boat was laying slack. The photograph just now shown me clearly represents the position of the "Queen" and the "Elf" on the evening of March 17, 1921, at the time I missed Fred Stewart.

(Whereupon said photograph was offered in evidence, without objection, and received and marked Plaintiff's Exhibit 13.) [221]

Q. Now I will ask you about how far apart were the two boats at the front end of the passenger cabin; how far was that from the "Elf"?

A. The passenger cabin where you come out the door was about seven or eight feet. At the time the passengers got off on the night of March 17th I was looking kind of on both sides. The photograph doesn't show the door of the cabin as they came out. It shows the window. No one could have passed from the "Queen" to the "Elf" without my seeing them during the landing of the passengers. The depth of the water from the rear of the "Queen" at the place we landed, to the wharf, is I think about fifteen or sixteen feet.

Q. What would be the distance from the rear of the "Queen" to the shores of the wharf?

A. Well, the ponton is 14 feet and the "Elf" was 22 and about six or seven feet between.

I landed at Kalama that night between nine and nine thirty. I believe there was a passenger train that stopped at Kalama that night.

I keep track of the time of the arrival and departure of trains. I cannot say exactly what the

(Testimony of William J. Pomeroy.)

schedule time of the train going toward Portland from Kalama was. I think I have a time-table with me. It seems to me that this train passed through Kalama going to Portland before the "Queen" landed that night. My time card shows that the train did pass through Kalama at 8:45.

Q. Now you were asked regarding a person walking around on the side of the "Queen" from the bow of the boat. Do you think a person could hang on to the side of the boat [222] there when the boat is in motion when it is raining like it was that night?

A. He would be just taking chances.

I left to go to the hotel to see the three timber cruisers after Sheriff Hogett came down to the wharf. Sheriff Hogett remained at the wharf and there were others there at the wharf by that time.

Recross-examination.

(By Mr. KEENAN.)

The life-preservers on the "Queen" are carried in lockers on the inside of the boat and then some piled outside in the stern on the platform.

Redirect Examination.

(By Mr. LANGHORNE.)

I could not tell how many life-preservers were on the boat. I believe that the life-preservers were counted after Mr. Stewart was missing. I could not say whether any were missing.

Testimony of Paul G. Shotswell, for the Plaintiff.

PAUL GRANT SHOTSWELL, being first duly sworn on behalf of the plaintiff, testified as follows: (By Mr. LANGHORNE.) [223]

I live at Kalama and have lived there for three years. Last March I was purser on the "Queen" which is a boat plying between Goble and Kalama. I remember well the trip I made on March 17, 1921. I knew Fred Stewart and had known him for about fourteen years. The "Queen" left Goble on the Oregon side for Kalama at approximately nine o'clock. It takes the boat fifteen minutes to make the voyage from Goble to Kalama. The Columbia River is about one and a quarter miles wide at that point, but as our boat would not go straight across we were running about two and a quarter miles. I should imagine it is about a quarter of a mile from Goble to the point of the island where we go towards Kalama, then we go up the river probably three-quarters of a mile or half a mile. Mr. Fred Stewart was a passenger on the boat which left Goble at nine P. M. I saw him that evening before the boat left Goble. I didn't talk to him before that time. After the boat left Goble Mr. Stewart was on the front deck in front of the pilot-house. I marked with a letter S. on Plaintiff's Exhibit 11 the place where Stewart was standing soon after we left Goble. Stewart had not bought a ticket. He had been standing out on the front of the boat. He was

(Testimony of Paul G. Shotswell.)

pacing back and forth on his right-hand side facing the rear and all of a sudden he stopped. I had collected the fares but didn't bother him because I had heard the situation and knew he was in trouble. And he quit pacing all of a sudden and gave me a dollar. I went into the pilot-house and got the change from Mr. Pomeroy and came out and handed it to him. He put it in his pocket. There was a large sample case and between the sample case and the railing there were three knapsacks piled one on top of the other which would bring it up about three or four feet. Stewart placed one hand on the knapsack, [224] vaulted over and walked rapidly back to the cabin, and that is the last I saw of him. Now here was the man standing here at the time. The knapsacks were between the sample case and the railing of the pilot-house, and he couldn't go around that space without going over it. He jumped over the knapsacks.

When we landed at the Goble Oregon side Mr. Stewart was standing on the slip. He was walking up and down before we approached there. When we landed there Captain Pomeroy spoke to him and asked him how he got there and he said he came down in a taxi. Mr. Pomeroy asked him if he had been waiting long and I don't remember the reply. Mr. Pomeroy stayed on the boat and I went up and waited on the train and came back and we started across the river after putting the baggage aboard. Mr. Stewart, myself

(Testimony of Paul G. Shotswell.)

and I think the traveling man and one of the cruisers was on the forward part of the deck. When we got about half-way across, sometime between there and the shore, Mr. Chisholm left the deck and went into the pilot-house with Mr. Pomeroy. I had pointed out Mr. Stewart to the traveling man and told him about the situation. After we got about half-way across the river, Mr. Stewart paid me his fare and went back into the cabin and that is the last I saw of him.

When we reached the slip at Kalama I saw Captain Reid standing at the top of the slip in plain view. I stood there with one hand on the railing. I do not remember tying the boat up. I may have done so, but if I did I don't remember. I do remember, however, standing there holding the boat with one hand. What I mean by that is that I had one hand on the railing keeping it close to the other boat. I always did that, stand there while they went off and helped [225] them with their baggage if they needed it. I noticed all the passengers go off except Mr. Stewart. I then looked up at Mr. Pomeroy in the pilot-house. Mr. Pomeroy then hollered up and asked Captain Reid who was standing at the top of the slip if he had seen Stewart come off. Captain Reid said "No." Then I started looking. I saw the traveling man go by from the boat and I hollered and asked him if he seen Stewart get off and he said "No." Then the four of us went through the boat, Pomeroy having a flash light. After that we went up to

(Testimony of Paul G. Shotswell.)

the depot and Captain Reid called the sheriff and I believe the county coroner. He said that Stewart had disappeared crossing the river. I could not hear, of course, the reply but I do remember that Reid said that the boat had been searched; that he was standing at the top of the slip and didn't see him go by.

The boat to which my attention has been called is the "Queen." The photograph is a fair and accurate representation of so much of the boat as is shown in the photograph. The person standing there holding the boat with one hand is myself. That is the position that I assumed that night. Stewart did not get off the boat that night while I was there, I don't believe.

(Whereupon the photograph just referred to was then offered in evidence, without objection, and received and marked Plaintiff' Exhibit 14.)

The first person who got off the boat that night was Mr. Chisholm. He is a brother-in-law of mine by marriage. I do not remember when the drummer got off, but I do remember the three men going up side by side. We made no stops crossing the river.
[226]

Cross-examination.

(By Mr. KEENAN.)

I formerly lived with my folks in Kelso and went to school there for about eighteen months. My folks and Mr. Stewart were at one time good friends, in a business way. He would accommodate my father and mother with loans. I felt under

(Testimony of Paul G. Shotswell.)

no obligation to him. I moved about twelve times between the two places over the lapse of about twelve years.

I saw Stewart on the slip at Goble when we got over there. I saw him get on the boat. Five other passengers counting Mr. Chisholm, got on. I usually start to collect fares as soon as the boat starts. I do not remember collecting Mr. Chisholm's fare. The reason I volunteer that statement is because Mr. Chisholm is a brother-in-law of mine and a personal friend of Mr. Reid's. I did collect the fares of all the other passengers. I do not remember whether I got tickets from the cruisers and drummer or money. About three minutes after I brought the fares collected from the other passengers to Mr. Pomeroy I got Stewart's fare.

Q. Of course as to the time that intervened between turning the fares of the first passengers in to Pomeroy and the time when you collected Stewart's fare is largely a guess, isn't it now? A. No.

Q. Well, how do you fix the time exactly?

A. I collected the fares from passengers immediately on leaving the dock as soon as we got in the river, but I didn't collect Mr. Stewart's until he voluntarily gave it to me.

Q. I am asking you about the time. I am not asking you [227] about the fares at all. I am asking you about the time that intervened between the collection of the fares from the first three or four passengers, maybe five, turning it in to Pomeroy,

(Testimony of Paul G. Shotswell.)

and then going to Stewart; I am asking about the time that intervened?

A. Approximately three minutes.

Q. That is merely a guess on your part, isn't it?

A. I didn't have a stop-clock. I couldn't tell.

Q. Please answer my question. It is merely a guess on your part, isn't it? A. Yes, sir.

I said on my direct examination that we were about a half to three-fourths of a mile 'from the Oregon shore, when I collected Stewart's fare. It was about the same distance from the Washington shore.

I remember making an affidavit to be used as proof of death. I don't remember whether or not in that affidavit I stated that we were about a thousand feet from the Washington shore when I collected Stewart's fare. I presume I knew as much about the distance we were from the Washington shore at the time I made the affidavit, right after the accident, as I do now.

I think Mr. Chisholm was the first one off the boat when we reached Kalama. I cannot say who was the next. The three timber cruisers got off together. I do not remember whether the traveling man was ahead or behind them. I usually keep track of the passengers that get off the boat. I remember seeing you in Kalama a week ago to-day in the evening, but I was not on the "Queen" at all when you were there; I was on the "Elf." I do not handle the baggage until [228] the passengers are all off.

The COURT.—Did I understand you to say that

(Testimony of John Scanlon.)

you heard Captain Reid say at any time that he did see Stewart go up the slip?

The WITNESS.—No, he didn't see him; absolutely.

Testimony of John Scanlon, for Plaintiff.

JOHN SCANLON being first duly sworn, on behalf of the plaintiff, testified as follows:

(By Mr. LANGHORNE.)

I live at Centralia, Washington, and have lived there nearly thirty-two years. I am a timber cruiser and have been such for twenty-five years. I am employed by the Weyerhaeuser Timber Company and have been so employed continuously for about seventeen or eighteen years.

I remember crossing the Columbia River on the steamer "Queen" on the night of March 17, 1921. The week previous I had been down on the Washington side at the Wisconsin Lumber Company's holdings. When I returned Raymond Schorer and H. L. Curtis were with me. Mr. Schorer has been with me in the woods steady ever since some time in January, 1920, 1921. Mr. Curtis has worked with me different times the last year. They were with me the night in March. I remember approximately that we boarded the "Queen" that night about nine o'clock. I stood out on the forward deck at first, but I remained there probably just a couple of minutes, only long enough to pay the purser. I went down in the cabin. There [229] was no one else in the cabin with me after I went down

(Testimony of John Scanlon.)

there. But these two young men that I have spoken of followed right in afterwards. While I was seated in the cabin a man came down there, stepped in the cabin, looked around and went back up. After that another man came in the cabin. I think I can describe the whole situation best in my own way.

I walked into the cabin and sat down on the seat, picked up an old paper that was there, looked at it, reading. It was new to me. I hadn't seen a paper in a week. The first gentleman who came in stood and just looked around and went back up. In a few minutes after—in just a short time after—another man came down who had a brief case or something that he carried in his hand, a tall man with a long overcoat on, and he stood and looked around. The two young men that were with me they were reading these navigation regulation signs on the boat as I remember. This tall gentleman looked around, he looked at them, looked over at me, and walked right out of the door on to the stern of the boat. That is the last I seen of him. A few minutes afterwards the two young fellows they walked out the same door. This gentleman I just described didn't lay down the brief case in the cabin. He took it with him. A few minutes after the boat whistled for the landing, the two young men came back in and stood there for a second or two and walked up on deck. The boat was just coming into the landing and I don't remember just how long we stood there but we picked up our packs and put them

(Testimony of John Scanlon.)

on and after the boat landed we stepped off the boat, walked up the wharf and as we started up the wharf one of the boys said to me, "Did you see that man come back into the cabin?" I says, "No, he didn't come back." "Well," they says, "he is in the river then," and I says, "Well, there must [230] be some place else he went," and they said, "No, there was no place else to go."

We walked from the boat landing right up to the hotel and went straight to bed. We all stopped in the same room. We got undressed and into bed and in just a very short time, why—I know I hadn't fallen asleep and I was pretty sleepy—somebody rapped at the door and the captain that was on the boat came up and asked us if we had seen this man go out the back door of the boat, and I told him, "No," we hadn't. Now I am a little ahead of my story. I told him, "Yes," we had seen him go out, but we hadn't seen him come back in. By the captain I refer to the pilot on the boat. I don't believe that it was over twenty minutes from the time we left the boat until Captain Pomeroy came to our room.

Cross-examination.

(By. Mr. KEENAN.)

Probably about thirty days after this accident I was interviewed by a young man concerning the accident, who said he was representing a life insurance company. To the best of my recollection the first time I was interviewed by anybody representing Mrs. Stewart was some time last July or August.

(Testimony of John Scanlon.)

There were only two men who came to the room at the hotel that night. Captain Pomeroy and some young man. No one else came to our room that night, nor did I talk to anyone else about it. My impression is that we did tell Pomeroy or the young man; that Schorer and Curtis told Pomeroy and the young man with him—that they went out on the rear of the boat and they told me after we got off the boat that the man who [231] went out on the rear must have gone in the river. I did most of the talking to Pomeroy. I don't think that either Schorer or Curtis stayed out on the deck after I went into the cabin. If either one of them did it was just for a minute or so. The boat was only a short distance out from the shore before the purser came around to collect the fares. My recollection is that he came around after the boat left the wharf at Goble. I couldn't say how long Schorer and Curtis were out on the rear of the boat, but it seemed to me like they were out there maybe five minutes. There was a short time intervened between the time this tall man went out on the deck and their going out. I am just giving my impression as to about what the time was.

Testimony of Raymond Schorer, for Plaintiff.

RAYMOND SCHORER, being first duly sworn, on behalf of the plaintiff, testified as follows:
(By Mr. LANGHORNE.)

I live at Centralia, Washington. At present I am engaged in running a compass for John Scan-

(Testimony of Raymond Schorer.)

lon, and have been engaged in that occupation about fourteen months. I am 27 years old.

I remember crossing the Columbia River on the steamer "Queen" from Goble to Kalama on the evening of March 17, 1921. That day we had been up to the Wisconsin Timber Company's place and had a section of timber to cruise, and that day we started traveling in and came to Stella and ate supper and went over to Mayger and caught the train and went to Goble. [232] Mr. Scanlon, Curtis and myself got on the boat at the same time and stood on the forward deck until after we were out a ways. It was quite a stormy night and so Mr. Curtis and I went in the cabin. I don't remember whether Mr. Scanlon was in ahead or not, but we were all in there. About half way across this man I suppose was Mr. Stewart came in the door. He had something in his hand. He stopped and glanced in the engine-room door, looked up and went to the back door and went out. That was what I should judge about half way across the river. About what I thought was about four minutes or such a matter Mr. Curtis and I went out the back door. We hadn't been out there very long. About, oh, somewhere around two or three minutes the whistle blew for the landing, so we came back in the cabin and from there we went out and put on our packs. I didn't see anyone on the back platform when we went out there. The light shines through the windows in the rear door. While we were out on the back platform I asked Mr. Curtis if he seen the

(Testimony of Raymond Schorer.)

man come back that went out. He said, "No," he never seen him. I said I didn't either, and didn't think much about it. I know he wasn't out there. We came back in and nothing more was said about it until we got off the boat and went up the slip next to the depot. We went on up to the hotel and went to bed and I suppose Captain Pomeroy and the sheriff, I suppose I didn't see him, came to the door and talked to Mr. Scanlon and he told him all there was to tell him.

I made no statement to anyone at the time about the man who went out on the back platform not being there. I made no search for him. I simply observed he was not there. After we had been out on the rear platform for about two minutes or such a matter, the whistle blew for the landing. I don't [233] know at this long distance of time whether we remained out there one minute or two minutes, or three minutes. I do not remember hearing anybody before I got off the slip calling to Reid and asking if Stewart went up. I didn't pay any attention to it. If anything like that was said I might have heard it.

Q. Well, I say if you heard somebody call out that a man fell in the river while you were going up the slip you would not forget it at this short distance from that time would you? A. No.

Q. So you are well satisfied now when you were going up the slip you and Mr. Scanlon and the other young man, that no alarm was given about Stewart being lost, was there?

(Testimony of Raymond Schorer.)

A. I said I didn't hear it. I didn't say anybody didn't say it.

Q. Well, if you had heard it you would remember it, wouldn't you?

A. I don't know but what I would.

Q. And there was not anything about the weather or the wind that would prevent you from hearing it if the man at the top of the slip heard it, was there?

A. I don't see what it could be. I don't see what would prevent me from hearing it if the man at the top of the slip would hear it. [234]

Redirect Examination.

(By Mr. LANGHORNE.)

Q. If you were there? A. Yes.

I don't know how big the platform was at the back of the boat. It was kind of dark out there and I had never been on the boat before or since. I suppose the railing was about four feet from the rear door. The platform was about four or five feet wide.

The COURT.—What were you and this other boy—Curtis was his name?

A. Yes, sir.

Q. What were you doing while you were out there; were you smoking or talking or what were you doing?

A. We were just kind of restless and standing around inside and so we just went out there and that is about all that was said.

(Testimony of Raymond Schorer.)

The COURT.—You stood there and watched the river or what?

The WITNESS.—Yes; just walked out there and looked around.

The COURT.—Did one of you stand on either side of the door or do you remember what your position was when you were out there?

The WITNESS.—We just walked toward the back railing and stood at the back railing.

The COURT.—Did you put your hand on the railing?

The WITNESS.—Yes, I put my hand on the railing I know.

The COURT.—Stood there a little while and then turned around and went in; is that it?

The WITNESS.—After the whistle blew for the landing; yes, sir. [235]

**Testimony of William J. Pomeroy, for Plaintiff
(Recalled).**

WILLIAM J. POMEROY, being recalled, testified on behalf of the plaintiff as follows:

(By Mr. LANGHORNE.)

I couldn't say how far from the shore I sounded the whistle. I generally sound it where the fish house is, just about four or five hundred feet from my landing place.

Cross-examination.

(By Mr. KEENAN.)

It would take me about one minute to run in from there.

Testimony of H. L. Curtis, for Plaintiff.

H. L. CURTIS, being first duly sworn, testified on behalf of the plaintiff as follows:

(By Mr. LANGHORNE.)

I live at Centralia, Washington. I have lived there for twenty-one years. I am twenty-one years old. I was one of the party which came across with John Scanlon on the "Queen" on March 17, 1921. We boarded this boat at Goble. It was after dark. I should judge about nine o'clock in the evening and we stood around the forward deck until the boat pulled off from the landing, then we entered the cabin towards the back of the boat and we were standing in there, I think we were talking or reading the signs on the walls, when some man, a tall fellow with a dark overcoat and a brief case in [236] his hand came walking through and he stopped and glanced around the cabin and went through the back door to a little back deck in the rear end of it. A little while afterwards Mr. Schorer and myself went out to see what was there. That was our first time on the boat and we wanted to see. We couldn't find this gentleman that passed out. We didn't see him out there, and I think, it is my impression, that we spoke of it at the time that he had not gone back in the cabin and wondered where he was at, and we came back in in the space of four or five minutes I should imagine and then I think we left the cabin for the deck and picked up our packs and after the boat had stopped at the dock

(Testimony of H. L. Curtis.)

we went up the slip or the wharf to the hotel and I think we spoke on the wharf about this man being missing; we hadn't seen him come back from the small deck on the back part of the boat. We went to the hotel and went to bed and in a short time two men came to the door and inquired whether we had seen this man on the back and Mr. Scanlon answered the call and it is my impression he told him that we had seen him go back and we hadn't seen him come back into the small deck—he hadn't come back into the cabin. And he asked our names, if I remember right, and I think Mr. Scanlon referred him to the register in the hotel. That is the last that was said about it.

Cross-examination.

(By Mr. KEENAN.)

I could not say when the other passengers got off relative to my getting off. I do not remember whether we timber cruisers were the first ones off. I cannot say how many people got off ahead or after. I couldn't say whether anyone else was on the slip as we went up; I didn't notice. I don't believe that as I went up the slip an alarm was given about a man being lost in the river. If any body had called up from the boat to a man on the slip saying in substance that [237] *that* a man was lost off the boat, I would have heard it at the time.

With reference to the intervals of time which I have given, I would say that they are not guesses but they are merely my impressions of the time.

(Testimony of H. L. Curtis.)

I am not accurate as to the time. I do not remember that about the time I got to the door and looked out over the water I heard the whistle blow for the land. I don't remember hearing the whistle. I am pretty sure that Schorer and I spoke about this man not being on the rear deck, but I couldn't repeat the exact words. I don't know what they were. I think it was raining when we went out there. It was a bad night. I don't know whether the wind was coming towards the boat; I couldn't say.

Testimony of Louis M. Plamondon, for Plaintiff.

LOUIS M. PLAMONDON, being first duly sworn, testified on behalf of the plaintiff as follows:

(By Mr. LANGHORNE.)

I live in Woodland, Washington, and have lived there since 1912. I am a country banker and have been such since 1905. Woodland is about twenty miles from Kelso. I have lived at Woodland since 1912. Before that I lived at Kelso. I first met Fred Stewart in the summer of 1903 at Kelso. I came in very frequent contact with Stewart. I think I was intimate with him.

I made a report to Mr. Hay the bank commissioner as to the condition of the Kelso State Bank. Mr. Carothers was [238] president of the bank on the 16th of March, 1921. I was in Woodland on that date. I didn't get a telephone communication from Mr. Carothers on that day, but I did on

(Testimony of Louis M. Plamondon.)

the 15th. As a result of that telephone communication with Mr. Carothers I telephoned the banking department in Olympia and followed that up by sending a telegram. As a result of these communications I went to Kelso on the evening of the 16th meeting there Mr. Carothers, Mr. George Plamondon and Mr. Claude Hay. So far as I know Stewart had no knowledge of the fact that Mr. Hay was coming to Kelso that night. It was not the purpose to give Mr. Stewart any knowledge of that meeting, but to keep it from him. I was not in consultation with Stewart either on the night of March 16th or March 15th. I was in Kelso on the evening of the 16th.

Stewart was a difficult character to describe. He was a very sensitive man and a man whose chief characteristic was pride. He was very touchy and very proud of his own judgment. He was always right in business matters particularly. From my observation I would say that he couldn't meet trouble or disaster very easily. I found that out from previous experiences with him. I might further say that he was not resourceful in meeting trouble. He served in the State Senate I think along in 1908, 1909 and 1910. I am not sure of the date. It was before that. He was succeeded as Senator by Senator Adams. I very frequently traveled with Stewart. I know what his habit of carrying money with him on his travels was. He very seldom had enough cash with him to take care of his personal expenses. He and I were very

(Testimony of Louis M. Plamondon.)

much the same in that respect. Very often I would have to borrow five dollars from him and he the same from me. The last time he and I were in Tacoma together he borrowed ten [239] dollars from me at the Tacoma Hotel. When traveling he paid his bills by check always. I don't believe I ever saw him with more than fifteen or twenty dollars in cash on his person.

I don't know whether it was the intention when Mr. Hay came down to close the bank. We had been figuring on taking the bank over—several of us had figured on a reorganization of that institution if it were humanly possible to reorganize and thus save the institution. That is what we had been working for and had been working for for some time. After my examination I came to the conclusion that the amount of money that we had available, which was \$50,000, plus the entire liability of Mr. Stewart to the Kelso State Bank if all paid in, would not have saved the institution and my judgment was borne out by the liquidating agent later. The report which I made to Mr. Hay should have reached him about the Monday morning previous to the Thursday of the closing of the bank. Looking at the paper handed me I see it is dated March 14th. That was Monday, I think. My report was then mailed to him on Monday and should have reached Mr. Hay the Tuesday morning previous to the closing of the bank. Mr. Stewart knew that the report had gone forward to Mr. Hay, but didn't know what was in the report. He

(Testimony of Louis M. Plamondon.)

had not seen my findings and conclusions. The papers now handed me are a true copy of the originals which are in Olympia. I turned these copies over to Mr. Langhorne.

(Whereupon the document referred to was offered and admitted in evidence, without objection, and received and marked Plaintiff's Exhibit 15.) [240]

Cross-examination.

(By Mr. RUPP.)

I am the brother of George Plamondon who testified in this case yesterday. Mr. Carothers who was the president of the Kelso State Bank is the father-in-law of George Plamondon. I was not present at the meeting in Chehalis on March 6th at which time Claude Hay was present. I was told that at that time or on the following morning an assignment of 100% had been levied on this bank. The reason that the report concerning which I have testified was made to Mr. Hay is that my crowd was considering the purchasing of the Kelso State Bank if there was any possibility of keeping the bank going. The motive for making the investigation of the bank was to ascertain whether or not the recapitalization of this bank was an advisable proposition. I am a stockholder in the bank at Woodland, Woodland being about twenty miles from Kelso, and am the president and cashier of that bank. It would not be a good thing for the bank at Woodland to have the bank at Kelso fail. Mr. Carothers, George Plamondon and myself ex-

(Testimony of Louis M. Plamondon.)

amined the Kelso State Bank. Stewart knew that we were making this examination. He was present and knew the purpose for which we were making it. We discussed all the paper of the Kelso State Bank with Stewart. I was requested by the State Banking Department to advise them as to what I found in the bank and I told Stewart that either the copy of the report or the original report would be sent to Mr. Hay. I knew when I started to make the examination of the bank that Mr. Hay on March 6th had requested that Stewart resign as cashier of the Kelso State Bank. I didn't advise Stewart of the exact date when I mailed the report to Mr. Hay and never discussed the report with him. In fact, after the examination [241] I never saw Stewart again. I concluded my examination of the Kelso State Bank about two o'clock Sunday morning prior to the closing of the bank. I worked all day Sunday compiling this report and completed it and mailed it Monday. I was working at my own bank on Sunday. We started working at the Kelso bank on Saturday afternoon and worked there until about one or two Sunday morning, after which I drove home and compiled this report in my own office. I was in Kelso on the evening of the 16th and had a conversation there, at which conversation Mr. Hay, Mr. Carothers and myself were present. Mr. Hay came from Olympia in the evening on a train which is called, I think, the eight o'clock train at Kelso. I came down to my brother's house and Mr. Carothers, Mr. Hay and

(Testimony of Louis M. Plamondon.)

my brother were there from a little after eight until a little after ten. Shortly after ten Mr. Hay stepped to the telephone, called Stewart up and said he would like to see him at the Kelso bank. Mr. Hay immediately went up town and that is the last I saw of Mr. Hay that night. I was not at the Kelso State Bank. I had no business there. I knew before March 16th that the State Banking Department had criticised the management of this bank. I had known for several years that the Kelso State Bank had been criticised by the State Banking Department. I had had some talk with Stewart off and on about the criticisms made on this bank by the State Banking Department. Stewart always laughed at the criticisms made on the Kelso State Bank by the State Banking Department. I was connected with the Kelso State Bank from 1905 to 1912, part of the time as book-keeper and part of the time as assistant cashier. My brother had been in the Kelso bank several years prior to the time I ceased to be connected with the Kelso bank. [242]

Redirect Examination.

(By Mr. LANGHORNE.)

Stewart always thought the Kelso State Bank was solvent.

Recross-examination.

(By Mr. RUPP.)

Q. Do you mean to say that on the 16th day of March, Stewart thought this bank was solvent?

A. That was his attitude, sir, all the way through.

Q. That is what he said?

(Testimony of Louis M. Plamondon.)

A. Well, his appearance generally bore it out until the last few days prior to the closing of the bank when the man was practically physically all in.

Testimony of Maude E. Stewart, in Her Own Behalf.

MAUDE E. STEWART, being first duly sworn, testified on her own behalf, as follows:

(By Mr. LANGHORNE.)

I live at Kelso, Cowlitz County, Washington, and have lived there since August, 1910. I married Fred L. Stewart on the 14th of August, 1910, at American Falls, Idaho. I immediately removed to Kelso. American Falls, Idaho, is where my parents live. I was born in Walla Walla and lived there until 1909. I went to Kelso to teach at that time. My father's name is Ezra Zaring. [243] When I married Mr. Stewart he was cashier of the Kelso State Bank and that was the same business he was engaged in on the 17th of March, 1921.

I recall a visit made to my home which Mr. and Mrs. Sardam made on the Saturday preceding the 17th of March. They were my intimate personal friends. I met them, I think, first in 1911. They had been down a short time before the middle of March and had just gone home, then I wrote them asking them to come back. My reason was that after Mr. Stewart came home from Olympia on March 6th he was absolutely a physical wreck and I was considerably worried about his condition.

(Testimony of Maude E. Stewart.)

The Sardams were our best and closest friends and I wanted someone with moral support to talk things over with and I therefore asked them to come down and be with us. Mr. Stewart was in a very, very nervous condition from the time he came from this conference at Olympia, absolutely unstrung. He was extremely pale, ate very little, slept very little. I recall the events on the night of March 16, I cannot tell when Mr. Stewart left the house that night. Mrs. Sardam and I had gone to one of the neighbors and when we came back Mr. Stewart was not home. He had told me that he expected to go down to the bank and do some work that evening. When he came home it was near one o'clock. We were watching for him; we had not retired. When he came in he was on the verge of a collapse. He said, "I am afraid they are going to close the bank. There is only one more chance. Mr. Hay has asked me to go in and see Mr. Collins with him in the morning and we are going in on the five o'clock train." It was about 4:40, I should judge, on the morning of March 17th when Mr. Stewart went downtown. I got up about four o'clock made coffee and tried to persuade [244] him to eat a little breakfast. He had slept absolutely none during the night. He didn't want any breakfast, but I finally persuaded him to take some coffee. Then he opened his brief case and asked me to sign a deed that he had there. I think that was a deed to one-fourth interest in the farm and I think the deed

(Testimony of Maude E. Stewart.)

was made out to Mr. Plamondon. I signed it. Just before he left he went into the room and took our little boy up out of his bed, then he went to the door and he came back three different times. I have not seen Mr. Stewart since he left that morning. I received a letter from him the morning of the 18th of March, 1921. The envelope just handed me is the envelope in which the letter came. The letter contained therein is the letter which I received. Mr. Sweeney, the lady sitting back there, is the person who brought that letter to me.

(Whereupon the letter was offered and admitted in evidence, without objection, and marked Plaintiff's Exhibit 16.) [245]

Plaintiff's Exhibit No. 16.

"March 17, 1921.

Dearest Girl:

I think I have everything fixed now but I just learned that they intend to close the bank and I don't know what they intend to do next. Looks as tho they were determined to put me out of business. I am going home by way of Eadem this evening with enough money to stop any ordinary trouble. Collins wouldn't do a thing and I didn't really expect him to, but Hay wanted to try it anyway.

The whole thing has made me sick and I feel shaky, but think I will make it all O. K. If anything should happen to me remember that I have \$86000 of life insurance policies in the vault in your favor and about \$50000 of accident policies all paid

up to date. I want you to collect it all and have the Sardams help you. Make up to them any loss they have if they should have any.

Take care of the following obligations of honor out of it also please.

1st a bond I have used out of the Richter estate of which I am administrator,
in the sum of.....\$10,000.

Also 3 of \$500. each or a total of..... 1,500.

2 notes of Huntingtons which have been
paid off 1,000.
and (which I was under bond for and
had the money..... 750

to help our business)

respectively, making a total to Rich-

ter estate of..... 13,250.00

Also 2 notes indorsed to old Mrs. James
of 1,200.

Also 1 note to Mrs. Lean Bozorth of
(Carr) 600.

and 1 to Mrs. Jennie Rogers of approxi-
mately 2,000.

and 1 to J. H. Rogers of balance of..... 800.

and 1 to the bank of my own of (John-
son) 6,000.

and 1 to the bank (Fisk memorandum
note) 6,250.

and 2 to the bank of \$3750 and \$2200.00.. 5,950.

\$36,050.00

being notes of the Kelso Farm Co. which I am responsible for, making a total of \$36,050. I don't

think of anything else except what the banks and individuals have security for.

This should leave you plenty for you and Sam. There is a memorandum will in our box in the vault but this action of the people about the bank nullifies it to quite an extent and I figure they will take all our property and you will have to leave any debts to be taken care of as they shall determine out of the same. There is also a sealed letter of instructions in the box but it covers this same ground, and if you get it better read and destroy it. It was only written in view of what I feared they might do to get me out of the business. If you can get the money from the Northern Life on one of their policies, or both in time to do it better take me down to Riverside to be buried next to my brother and where the old folks will want to be ultimately. The other policies will be paid to you slower no doubt. Don't have the old folks come up if you can avoid it. Go down there to them and stay with them as much as you can, as they will need you and the little man to cheer them. Your car is at Stevens 531 Washington Street. He will sell it or keep it for you. It is your. [245a] The California land was deeded back to Mother for the place next to ours and the deed to it was made out to Ford but he will probably turn it into the bank. He was to cancel our \$1000.00 note and grocery bill and give us the change out of the \$3500.00 for it, but I presume that is off. Give them a deed to our home if they want it and reserve your furniture if you want it, and they will let you. Our timber tract sold

to the Alger Lbr. Co. has an equity of \$62,000.00 in it but they will take it, and everything else except what is covered by mortgages. I thought we were worth \$200,000 and that the bank was solid as Gibraltar but after the Plamondon report we are not worth anything except what you keep out of my insurance money. Don't let the old folks turn any of their property as they are not responsible except for the assessment of \$500.00 on their stock. Have them send in the stock with the \$500.00 and let it go. Do the best you can to bring Sammy up right. I wouldn't let him go in the banking business as it is one lifelong worry and fight.

I haven't been able to do very well for you but I have done the best I could at all times and if they had let me alone we would have been on easy street for everyone this spring.

This is all I can think of now. Of course if I get home with the money and can get by this trouble all this should be destroyed and forgotten.

You have been the sweetest wife any man ever had and I love you always. Try to keep Sammy and the folks from grieving all you can.

With all the love in the world, I am

Yours,

FRED."

Since the receipt of that letter I have not heard nor seen Mr. Stewart.

I owned a car at the time Mr. Stewart left on March 17th. After Mr. Stewart came back from the bank the night of the 16th he said, "I am afraid they are going to close the bank. If they do we don't know what may happen." He said, "We have absolutely

(Testimony of Maude E. Stewart.)

nothing." He said "The car is yours and I wish you had it some place where you can get something out of it," and he said "I want you to send the car to Portland and get something out of it." And the next morning I 'phoned Mr. Hayes and asked him to drive my car to Stevens' garage at Portland. [245b] About a week later there was so much gossip about where the car was, so I wrote a letter to Mr. Stevens and asked him to give it to Fred Hayes and ask him to bring my car back to the garage in Tacoma where it remained until it was sold.

When Mr. Stewart left on the morning of March 17th he wore a very dark brown sort of a mixed suit with a very narrow hair line red stripe in it, this stripe being rather indistinct. He also wore a sort of heather mixture overcoat, a grayish brown and very heavy woolly material, and had a stitched dark brown cloth hat. He carried with him a small bag and a brief case. I can't tell you exactly how long he had been carrying a brief case. I had given him a brief case for his birthday present about two or three years previous. He never went to the bank without it or came home without it. He carried all his papers with him. I never saw him start any place without this brief case. He carried it with him constantly wherever he was going.

About two days after March 17th, the envelope now handed to me and which appears to be addressed to me is in my husband's handwriting. I cannot be positive who brought the envelope to me. It was either Carl Hayes or George Plamondon, one of the men who opened the box at the bank. It

was my impression that Mr. Hayes brought it up, but I am not positive. The name signed is that of my husband and the handwriting at the bottom is his name. I recognize the figures in the letter as being in his handwriting.

(Whereupon the letter just referred to was offered and admitted in evidence, without objection, and marked Plaintiff's Exhibit 17.) [246]

Plaintiff's Exhibit No. 17.

PRIVATE MEMORANDUM.

Dear Wife:

If anything should happen to me before we get things straightened out I want to make these suggestions as to how to handle things for your best interests and those of everyone who have looked to me for protection.

You will find a will in the top of our box in the vault and papers in connection with the various properties we own in the box with it.

The debts to Messrs. Crouch, McKenney and Maurer are to be cancelled by the deed we have already executed conveying each a quarter interest in the ranch back to them. The equity in the timber should be turned over to the bank as they can carry the taxes and interest and realize from \$25,000 to \$40,000 from same on the Alger contract whereas you must not try to carry it out as it is too big for you I am afraid.

The main thing I want you to remember is that I have \$86000 of straight life insurance and about \$50000 of accident insurance and you should get this and deposit in *you* own name and keep it en-

tirely separate from the estate funds if you have anything to do with them. Get the Sardams to help you about the insurance money. You will be perfectly safe in depositing it in the Kelso State Bank if you make it clear that it is separate insurance money due you but if you go to California it would be just as well to take most of it with you. The bank people or the examiners department cannot hold you on the guarantee I have signed except as to our property and you will probably have to give that all up anyway.

The California forty has been deeded back to Mother in return for the place next door to us which has been deeded to Carothers.

One thing that must be taken out of my insurance money however as a debt of honor and as soon as you get it and with as little notice as possible and that is that I have used \$10000 in one bond and \$1500 in three others and \$1750 of notes belonging to the Richter estate and they must be taken care of immediately, in case of my death, out of insurance money. This would amount to \$14000, and there are about \$1200 of notes indorsed to Mrs. Julia James which should be taken care of promptly too, also a \$600 note indorsed to Mrs. Lean Bozorth, my own note of about \$2000. held by Mrs. Rogers, in her box in the vault in the bank, a note of \$800 with interest indorsed to John Rogers in his box (the Tom Word mortgage balance). Also a note of \$6250 representing Fisk's share of the Shillapoo money I put in, which I turned in as a memorandum note at the bank should be taken care of and

two notes of \$3750. and \$2200.00 respectively which I have been carrying at the bank in the name of the Kelso Farm Co. but which I am responsible for. If you take care of these promptly out of my insurance money together with any overdraft I may have it will leave everything I know of square at the bank. I took out \$2500. extra insurance for these items a few months since.

Let the outside banks take what security they have or wait during the period of administration.

All the guardianship and administrators accounts are all O. K. except the amounts used out of the Richters Estate which I gave bonds for, and was to replace out of the legacy coming to me from the east if we did not sell the land or timber first.

[246a] One thing more for you to remember carefully is I had agreed to give up our stock in the bank which stands in my name, and you must not allow them to claim that it is yours and try to collect a dividend out of the insurance money. The stock is theirs now subject to the debt against it. Father will have to pay an assessment of \$500. on his but you can make it up to him on the insurance money if he will let you. Better have him turn it with his dividend and let them keep it.

If you want to act as administrator of my estate they cannot stop you as the law gives you that right during the first forty days after my death. You can have an allowance set aside for your support out of the estate if you wish. I don't know whether you would want to act or not. My estate will be practically bankrupt after losing out at the bank

and having to make 2,000 quickly on the things that I would have had plenty of time on if it had not been for this recent development and I figured we were worth \$200,000. but the best you can expect now is to have my record clean at the bank and keep \$40000 or \$50000 of the insurance money for you and Sam. Have the folks change their will so as to leave anything they were going to leave to me to you and Sam instead. Take as good care of them as you can.

If you decide to act as administrator stretch it out for the full year or longer in order to take plenty of time to dispose of the timber and other property to advantage, and get a friendly and reliable attorney who will not talk too much. McKenney is friendly but very leaky. Fisk is not entirely my choice either. I believe Mr. Magill would be about the best but dont think he can act in this state. You could have Bill Stuart or Judge Miller or Mr. Stone. If you dont want to act yourself you could let the bank itself be appointed. The main thing is to string it out so as to give the bank plenty of time to strengthen up without anyone finding out that I was being forced out on account of slow loans as that would be apt to react against the bank. It would make a good excuse for you to come back up here after a few weeks or a month or so and you could stay in Portland or Tacoma most of the time if it is too unpleasant to stay here.

Another thing I think you had better do is to take me down to Riverside to be buried with my brother

(Testimony of Maude E. Stewart.)

where the old folks will want to be later when they are thru. It will not cost so very much and it will take you away from here and to the old folks at one and the same time. You could turn the policies over to Sardam and let him get the proofs all ready and take them down there to you if it would be easier for you and I believe it would be. You could pay the expenses and have Frank and Hazel both run down with them.

None of this goes except in the event of my death of course. I am nervous and sick or I wouldn't write it. With love to you always.

FRED. [246b]

There were only a few things in the grip that my husband carried away with him on the morning of March 17th. He always kept a few things in this bag, a comb and brush, a few handkerchiefs and clean collars and a tie or two, and I believe there was generally a timber map that he carried with him a great deal. He so often went to Portland on short notice that he would just go up and grab his bag and hurry to the train. Those were the things that were in the bag when it was returned to me.

Cross-examination.

(By Mr. RUPP.)

I left Kelso on the 28th of March, 1921. I was back there from the 4th to the 18th of August, and I have been there since March 12, 1922. My husband discussed with me prior to the 16th of March the condition of the bank. When he came back

(Testimony of Maude E. Stewart.)

from this conference with Mr. Hay in Olympia he told me that they had asked him to turn over the control of the bank. He had really worried about the bank ever since we had been married. I knew that there had been criticisms that Mr. Stewart had been disturbed by, but he insisted always that if they would let him alone he could work it out. He himself was never discouraged about the condition of the bank.

Redirect Examination.

(By Mr. LANGHORNE.)

When I left Kelso on March 28, 1921, I went to Elsinore where Mr. Stewart's father and mother live. They are both [247] alive. His father is the old gentleman sitting in the courtroom. The reason I went is partly explained in the letter I received on March 18th. In this letter Mr. Stewart asked me to go to his people; they were old and it was a terrible thing for them, and I thought somebody ought to be with them so I went.

Q. Did anyone urge you to go?

A. There seemed to be nothing to do in Kelso. I had no people there and my friends thought it would be best to go away for a time.

Q. Were you being bothered by the depositors at that time?

A. There was considerably annoyance, yes.

I arrived in Elsinore on March 31, 1921. I then went north on the 14th of June, 1921, to visit an aunt at Los Altos— a little town about fourteen miles from San Jose. I arrived there on the morn-

(Testimony of Maude E. Stewart.)

ing of the 15th and stayed there until July 28th. I then took the train for Tacoma arriving there July 30th. I went to the Bonnaville Hotel. I stayed in Tacoma until August 4th, then went to Kelso and remained there until August 18th. I spent one night in Portland, left Portland August 19th and arrived in American Falls August 20th, where my father and mother lived, and remained there visiting until March 7th.

Testimony of J. W. Hogett, for Plaintiff.

J. W. HOGGETT, being first duly sworn, on behalf of the plaintiff, testified as follows:

(By Mr. LANGHORNE.) [248]

I live at Kalama and have lived there about thirty-three years. I am sheriff of Cowlitz County at the present time. I was sworn in on the 13th of January. I was sheriff in March, 1921. I was in Kalama on the evening of March 17, 1921, at about the hour of 9:30 P. M. At that time I guess I was at the depot—the landing. Prior to going to the depot I was at Dr. Sims' place, at which place I received a telephone message from Captain Reid. He said, "Is this you, John?" I said, "It is." He says, "Stewart is overboard, went into the river." I says, "What Stewart?" He says, "F. L. Stewart, the banker at Kelso." I says, "Are you positive?" He said, "I am." I asked him if he had looked on the boat and he says, "We have; we have searched the boat and he is not there." And I said, "Well, I will be down." And later I met him at

(Testimony of J. W. Hogett.)

the intersection just in front of the bank. He was just coming up; I think he was going over to the K. of P. Lodge that night, and I asked him there if he was positive that Stewart had went overboard, and he says, "I am." He says, "He didn't come off the boat." I asked him where he was going. He says, "I am going over to the K. of P. Lodge." He says, "I will be right back." I went down to the boat and in a few minutes he came down there. I don't think it would hardly be five or ten minutes. I just went right down, walked the block. When he arrived at the boat I had a talk with him concerning the people who came off the boat. He said that he was standing at the head of the slip when the boat landed. That there were three timber cruisers came off, Johnny Chisholm and a drummer. I said, "How are you positive that Stewart didn't come off; that he got by you?" He said, "No, he didn't get by me." So I says, "What can we do?" and he says, "You can take the boat and [249] go down the river along with me." He asked Pomeroy to take me down the river with a few more there. We went down along the river and I says, "We will go out about where you saw him last" to the boys. We went out there and I says, "Now, we will drift down to about where you think if any of his papers would come out of his brief case or his hat or anything would come off, just be floating along on the water, anything of that kind, we will go in there." There was a search-light on the boat; always have search-lights, you know; and we

(Testimony of J. W. Hogett.)

came back up the river and searched the bank all along good by the piling and the boom poles. Captain Reid was not with us on that trip. Captain Pomeroy was with us and managed the boat and the mayor of the town now, J. A. Clark, was on the boat. I don't remember exactly who were on the boat; there were several.

I have heard it stated that there have been several persons who have gone into the river whose bodies have not been recovered that I have heard of.

Cross-examination.

(By Mr. KEENAN.)

I first met Captain Reid on the street just out in front of the bank a little ways on the intersection of the street. I just paused there for a second or two. I think we were at the top of the slip at the time, and he told me the number of passengers that came off and named them. We were standing there during that conversation. I had three different conversations with Captain Reid. One over the telephone, one on the bank and one at the top of the slip. [250] Afterwards we went on the boat, my object in so doing being to investigate. I think I was standing at the top of the slip when Captain Reid came up to me. After I saw him in front of the bank he went to the K. of P. Hall and I went to the top of the slip and I was at the top when he came back from the Hall. I don't say how long I had been there. There were some people there I don't know just who they were. I don't know whether there was anyone else there to hear the re-

(Testimony of J. W. Hogett.)

mark of Captain Reid's as to the number of passengers who came up. Some other parties heard him mention when he phoned me. I don't recall any other person at the top of the slip.

I have heard of bodies that have not been recovered from the Columbia River. I have heard people talk that way. I recall bodies that I know of myself which have never been recovered. There are five that I am almost positive of. I never heard of their being recovered, and I am almost positive that they never were found that I knew.

Testimony of William Stuart, for Plaintiff.

WILLIAM STUART, being first duly sworn, testified on behalf of the plaintiff as follows:

(By Mr. LANGHORNE.)

I live at Kelso and have lived there since December, 1918. I am the prosecuting attorney of Cowlitz County and have been such since December, 1919. I was at my home in Kelso on the evening of March 17, 1921. Captain Reid called [251] me over the telephone there somewhere between 9:30 and 9:45 that evening. He said, "This is Captain Reid at Kalama." I think it was Reid that called me. I know Reid and he said, "Fred Stewart has had an accident." I said, "Is that so,—how is that?" He said, "He jumped off the boat and committed suicide." I asked him if he had told the sheriff and he said, "Yes, Sheriff Hogett." That is about all that was said. I did not go to Kalama that night. I think I went the following

(Testimony of William Stuart.)

day. I didn't see Reid. After I received this telephone call from Reid on the evening of the 17th I called Frank M. Sardam and Mr. Carothers, I think, the president of the Kelso State Bank; Mr. Sardam was Stewart's friend.

(No cross-examination.)

Testimony of S. S. Stewart, for Plaintiff.

S. S. STEWART, being first duly sworn, testified on behalf of the plaintiff as follows:

(By Mr. LANGHORNE.)

I live at Elsinore, California. I am Fred Stewart's father. I am eighty years old. I last saw my son alive in November, 1920. I have not seen him since. He had a brother, but he died years ago. He is buried near Riverside, California. My wife is living and is seventy-three years of age.

(No cross-examination.) [252]

Testimony of Chris Hansen, for Plaintiff.

CHRIS HANSEN, being first duly sworn, testified on behalf of the plaintiff as follows:

(By Mr. LANGHORNE.)

I live at Kalama and have lived there six years. I live at and near the Columbia River, and have for about twelve years. My occupation is that of diver. I have been engaged in diving about ten years in this country and two years before that. I am familiar with the bottom of the Columbia River in the vicinity of Kalama. I have been on the bottom of the Columbia River along in the vicinity of

(Testimony of Chris Hansen.)

Kalama down stream and across the river. Prior to March 21, 1921, I was working on the drift just below the old incline which originally first started pretty near where the oil station is and I dropped down to the lower end of the incline on account of big clay banks in there and snags that it was impossible to clear. The water runs all the way from 35 to 68 feet in depth about that time. The water on the 21st of March, 1921, was high being about twelve feet above normal; above low water in Portland. The bottom of the river starting in there and extending on through towards Goble and below is very rough in some places. It will form holes and banks different places, there will be piles of snags, that is trees what piles up, drift down with high water and eventually work a hole in the bottom of the river and they will stop there and they will bury up, which will take several tons' strain to pull them back out of the ground. These holes are met with just occasionally; they are not all along. You will find a hole; maybe there will be twenty feet, then you light on the ground and you walk along and pretty soon you [253] will go in and maybe go in 20 feet deeper, and then you get back up out of the hole again. Some of these holes are pretty large, some not very large, some not over fifty feet across, but they will be from 15 to 20 feet deep. On sandy bottom they extend pocket-shape, that is sloped, and if it is clay bottom why, the lower side will be pretty near level—or the top side and the lower side will go on a bank which may extend over

(Testimony of Chris Hansen.)

some places eight or ten feet you can get under in places. They extend upwards, upstream. The current beats underneath of them and it is too hard for the current to wash it off sloped, so it eats a hole under and it gradually falls off at the top. If a body should get down in one of those holes and the tide was flooding, it might get out. If it is not flooding I don't know how much chance there would be of its coming out.

Q. Explain to the Court why.

A. Why, because the current holds them in there and usually the snags will roll along and it is usually covered with snags, that is, logs and stuff, and eventually fill it up, you see, and that will form a big bank.

If you go down the river and across to Coffin Rock about one mile, the river is 180 feet deep. I have never been down to the bottom of that very hole. Below the hole I have been down where the cable crosses, a little above. I have been down one hundred feet. I usually find in these holes logs and whole trees and one thing and another like that. There will be quite a hole in the channel where the sand is. In one place there may be fifteen or twenty feet difference [254] and in a day or two afterwards you come back it will be just level there and the hole will be some other place. Mounds and ridges always form in there whenever the river rises; when it falls they fill up again. The bottom of the river where it is sandy and especially during the high water, moves. Sand will move so fast

(Testimony of Chris Hansen.)

down there it will bite your hands in the current. I can hear the sand moving in the water on my helmet. It is just like someone pouring a bucket of gravel different places.

The COURT.—Does the pressure of the air in your suit make things sound louder than ordinarily?

The WITNESS.—Well, no, that don't really do it. I don't hear anything unless it touches my helmet on account of the noise of the air and the pump.

I have an apparatus to register the depth I am down. The fellows on top, whenever I drop into a hole, can tell exactly what the difference in feet is. It doesn't make any difference whether I go straight down or slanting down. The apparatus shows the actual depth of the diver.

Q. Have you ever found bodies or anything down in the bottom of the river when you were down there? A. I have.

The only times that I can find them is when the water is very low. You take on high water it is no use, you can't work or you can't hardly stay there. And in quiet water alongshore mostly are the places where I can find them. After anything lays in the bottom of the river for a few hours [255] when the river is especially rising and muddy, the sand moving will fill it over, shove it into a hole probably and that hole eventually fill over if it lays any length of time.

I have been engaged in pulling snags out for the fishermen. We usually have to do that whenever the fishing season is on, whenever the fish goes in

(Testimony of Chris Hansen.)

there; that is when they fish in there or before. The water always brings in more or less snags and fastens them in these holes and there may be only a corner of them sticking out. I have found dead bodies in the Columbia River, I don't know exactly how many but about ten. I have seen two or three cases of where I had to break them loose to get them out. I went down one time in the mouth of the Cowlitz River to get a boy out. He was under a pile of snags, what I call trees and stuff filled in, and the boy was sitting down about like this (witness illustrating) hanging on to a limb and I had to break the limb off and break the limb out of his fingers to get him loose to get him out of there. Quite a few people have been drowned in the Columbia River whose bodies have not been recovered. I have never heard of finding some bodies which I have looked for for some time. I have looked for three myself which were never found. I saw one person drowned whose body was never found. This person was drowned above the mouth of the Columbia River in the last part of July, 1912. We never did find him and never heard of him. I was fishing at the time and picking up a net below where—about a quarter of a mile below a boat above me. This fellow was standing up in the stern of the boat and another man was picking up the net. He fell overboard and went down. I got my net loose and run up there. This fellow hollered and I never saw him any more. The river was pretty well up at that time [256] although

(Testimony of Chris Hansen.)

it was falling. A year after that a man by the name of Lederel and a man by the name of Boldy Wright came from Washougal. Lederel fell overboard in the same place and never was found. When the water is high it is swifter than when it is lower. There are also more whirlpools. These whirlpools in the bottom stir the sand up. They are so strong that you can sometimes hardly hang on; so strong that when the river gets to that stage it takes two men to hold the line on top, just the empty hose and line.

Q. Take the condition of the water as you know it to be in on the evening of March 17, 1921, do you think from your knowledge of the water that a man could live in the water very long if he should happen to fall overboard or get out of the boat with all of his clothing on?

A. Not very well. It is pretty cold.

Q. Do you think a man would live very long that was in there? A. No.

Cross-examination.

(By Mr. RUPP.)

In order for a fisherman to fish he must have a clear bottom. Along in 1920 I was employed by a crew of fishermen or a combination of fishermen for the purpose of clearing up a certain space or drift. This drift started in about the lower end of the city of Kalama and extended about a mile and a half down the river. I don't know whether it was 450 feet wide or not. Among the fishermen who employed me for the purpose just stated was a man.

(Testimony of Chris Hansen.)

named Bartelson. I was employed in the [257] fall of 1920 by these men in clearing the river bottom over the space just mentioned. I was so employed in the fall of 1920 for about three months, but didn't work every day. I was not engaged clearing the river bottom between January 21st and March 17th, 1921, but I did work for this same crowd of men at this same point on this same drift after March, 17th, 1921. By the word "drift" I mean the space over which the fishermen are to fish and for which the bottom of the river must be cleared. In the fall of 1920 there was alongside of the drift on which I was working another drift belonging to another crowd of fishermen. This drift was towards the Oregon side of the river and above the drift on which I was working. This second drift started in about one mile and a half above the town and extended out from the other side of the channel to the sand bar. The main channel of the river in March, 1921, was between the sand island which is located in front of Kalama and the Washington shore. The main channel of the river at one time was on the Oregon side of the river, but it was changed to the Washington side about two years ago. The United States government had for about two years previous to March, 1921, been dredging a channel in the river along the Washington shore. This channel the government dredges every year.

In clearing the river bottom for the fishermen the course pursued is as follows: The fisherman takes

(Testimony of Chris Hansen.)

an old net and drops it on the bottom of the river and with his boats pulls this net along, and when it strikes something that detains the net or holds it you go down and pick up the article which has caught or held the net. The vast majority of the articles which I pick up on the bottom and which hold the net are stumps and trees. I had in the fall of 1920 pretty well [258] cleared the bottom of the river on the drift on which I was working.

Q. Now where with reference to the drift on which you were working, was this clay bottom that you have talked about in answer to Mr. Imus' questions? A. On which?

Q. Where was there any clay bottom of any particular size on any portion of the drift which you were clearing in the fall of 1920?

A. Above this drift.

Q. Above this drift. Now the boat as it proceeds from Goble to Kalama crosses the river further down the stream than this sand island which is in front of Kalama; isn't that the fact? A. Yes.

Q. —and then comes up on the Washington side of the river in the main channel to Kalama. Where with reference to the place where the boat crosses the river was this clay bottom that you have talked about?

A. Well, the boat swings over in across the channel and passes up on this side of the channel usually over that one head of this drift.

Q. Had you done any work for the crew of fishermen which owned the drift just beyond the drift

(Testimony of Chris Hansen.)

on which you were working in the fall of 1920?

A. Beyond the drift?

Q. Well, you and I agreed a minute ago that there was a drift belonging to another crowd of fishermen alongside the drift belonging to the crowd of fishermen of which Bartelson was a party; we agreed to that, didn't we? [259]

A. Yes, sir, above it.

Q. Now, had you done any work on that drift for the crowd of fishermen which owned that fishing ground or drift?

A. I have, but I don't know certain what time it was.

Q. Now, in order for the fishermen to fish it is necessary that the bottom of that river on the place where they are to fish be practically as smooth as this floor isn't that right?

A. Yes; that is for snags.

The boy I found who was holding on to a limb was in the Cowlitz River at the shingle mill right at the mouth of the river. In the mouth of the Cowlitz River there is a boom maintained by the logging company and underneath of that boom and in the immediate vicinity of it in the Cowlitz River there are a large number of snags. That is where I found the boy, but I didn't find him under the boom. I was looking for the boy because his mother sent me to look for him.

I can swim, but it all depends on what kind of water you put me in. I have gone swimming in the Columbia River at a certain time of the year. I

(Testimony of Chris Hansen.)

have been engaged in this diving business the most of my life.

I plead guilty to a charge in the Federal Court of Oregon for having had liquor unlawfully in my possession. [260]

Testimony of G. H. Thayer, for Plaintiff.

G. H. THAYER, being first duly sworn, testified on behalf of the plaintiff as follows:

(By Mr. IMUS.)

I live at Kalama. I am employed in the County Auditor's office at the present time. I have been county treasurer and county auditor of Cowlitz County. I have lived in Cowlitz County about fifty years. I think I am familiar with the Columbia River. I have been on that river practically all the time in the last thirty or forty years steamboating and gas boating most of the time. I remember of a number of instances of persons who were drowned and never were recovered to my knowledge. I have worked for Captain Reid on the "Queen" and the "Elf." I worked a good portion of the time up until the last year ever since Captain Reid has been there, probably ten or eleven years. I acted as pilot of the boat. It is the custom in handling the "Queen" to land on the outside of the "Elf" at the last trip at night, put out a spring line and hold it there until passengers are off and then drop the boat back in the moorings. This spring line is just one line. The bow of the boat will ordinarily swing out unless you keep the boat

(Testimony of G. H. Thayer.)

working ahead slowly and hold the wheel over so as to hold the boat in, which is the custom. That is the way I always did; kept the engine working so as to hold the bow up against the "Elf." I heard Mr. Pomeroy's evidence as to his position on the evening of March 17, 1921, at the time Stewart was missing. To a person standing in the position testified to by Mr. Pomeroy, I do not think a man could get from the "Queen" to the "Elf" without being seen.

(No cross-examination.) [261]

There was then offered a letter written by Mr. Sardam dated April 9, 1921, to Mr. W. A. M. Smith, Manager of the Mutual Life Insurance Company, Stuart Building, and an affidavit of Maude E. Stewart which accompanied said letter. The admission of these papers was objected to upon the ground that they were irrelevant and immaterial in that they did not furnish satisfactory proof of death. The objection was overruled, an exception taken and allowed. The papers were then admitted in evidence and marked Plaintiff's Exhibit 18.

There was then offered in evidence on behalf of the plaintiff a letter written March 23, 1921, by Mr. Sardam to the Mutual Life Insurance Company on behalf of Maude E. Stewart the beneficiary under policies Nos. 2242058 and 2244868. Counsel for the defendant Mutual Life Insurance Company objected to the admission of this letter on the ground that it was immaterial, irrelevant and not tending to establish any issue in this case, and

(Testimony of Frank J. Sardam.)

furnishing no proof whatever of the death. The objection was overruled and an exception taken and allowed. The letter was then admitted in evidence and marked Plaintiff's Exhibit 19.

**Testimony of Frank J. Sardam, for Plaintiff
(Recalled).**

FRANK J. SARDAM, being recalled, testified on behalf of the plaintiff as follows:

(By Mr. LANGHORNE.)

I received the letter shown me dated April 26, 1921, from the Prudential Insurance Company of America. That letter was an answer to one of the letters I had written them. [262]

Counsel for the defendant Mutual Life Insurance Company objected to the introduction of the evidence of the letter on the ground that said letter was not in any way binding upon the Mutual Life Insurance Company; and counsel for the Prudential Insurance Company of America objected to the letter on the ground that the same was irrelevant and immaterial. The objections were overruled an exception taken and allowed, and the letter admitted in evidence and marked Plaintiff's Exhibit 20.

There was then offered in evidence on behalf of the original affidavit of Maude E. Stewart under policy No. 2242058. Counsel for defendant Mutual Life Insurance Company objected on the ground that the same was irrelevant and immaterial in that said affidavit did not furnish satisfactory proof of death of Fred L. Stewart. The objection was over-

ruled and an exception taken and allowed, and the paper taken in evidence and marked Plaintiff's Exhibit 21.

There was then offered in evidence the original affidavit of Maude E. Stewart, plaintiff in the above-entitled action, under policy No. 2244868. This affidavit was objected to on the grounds that it was irrelevant and immaterial and did not furnish satisfactory proof of death. The objection was overruled and an exception taken and allowed, and the paper admitted in evidence and marked Plaintiff's Exhibit 22.

There was then offered in evidence the original affidavit of Paul G. Shotswell in the Mutual Life Insurance Company case. Counsel for the Mutual Life Insurance Company [263] objected to the introduction of the same in evidence on the ground that the same was irrelevant and immaterial and that it did not furnish satisfactory proof of death. Objection was overruled, an exception taken and allowed and the paper admitted in evidence and marked Plaintiff's Exhibit 23.

There was then offered in evidence on behalf of the plaintiff an original letter written by Messrs. Hayden, Langhorne & Metzger transmitting the affidavit of Paul G. Shotswell. Objection to this letter was made by counsel for defendant Mutual Life Insurance Company upon the ground that the same was irrelevant and immaterial and did not furnish satisfactory proof of death. The objection was overruled and an exception taken and allowed,

and the paper was admitted in evidence and marked Plaintiff's Exhibit 24.

It was then admitted by counsel for the Mutual Life Insurance Company that the company never requested any other or further affidavits of Maude E. Stewart and Paul G. Shotswell.

There was then offered in evidence on behalf of the plaintiff a letter written by H. G. Fitch on May 13th. Counsel for defendant Mutual Life Insurance Company objected on the ground that the same was irrelevant and immaterial and did not furnish satisfactory proof of death. The objection was overruled and an exception taken and allowed. The paper was then offered in evidence and marked Plaintiff's Exhibit 25.

There was then offered in evidence on behalf of the plaintiff a letter written by H. G. Fitch on May 13, 1921, to the Mutual Life Insurance Company. Counsel for the Mutual [264] Life Insurance Company objected on the ground that the same was immaterial and irrelevant and did not furnish satisfactory proof of death. The objection was overruled, an exception taken and allowed, and the paper was admitted in evidence and marked Plaintiff's Exhibit 26.

There was then offered in evidence, on behalf of the plaintiff, an original letter written by Frank J. Sardam dated March 23, 1921, to the Prudential Insurance Company of America on behalf of Maude E. Stewart. Counsel for the defendant Prudential Insurance Company objected to the introduction of

said letter in evidence on the ground that it was immaterial, incompetent and irrelevant and furnished no evidence of proof of death. The objection was overruled, an exception was taken and allowed and the paper admitted in evidence and marked Plaintiff's Exhibit 27.

There was then offered in evidence, on behalf of the plaintiff, original letter dated April 18th written by Frank J. Sardam to the Prudential Insurance Company, also certificates of proof of death signed by Maude E. Stewart. Counsel for defendant Prudential Insurance Company objected to the introduction in evidence of said documents for the reason that they were incompetent, irrelevant and immaterial and not tending to furnish any proof of death. The objection was overruled, an exception was taken and allowed and the papers admitted in evidence and marked Plaintiff's Exhibit 28.

There was then offered in evidence three original affidavits signed by Maude E. Stewart and an original letter dated May 3, 1921, signed by H. G. Fitch enclosing the said [265] affidavits. Counsel for defendant Prudential Insurance Company objected to the introduction in evidence of these instruments upon the ground that the same, and each of them, were incompetent, irrelevant and immaterial and not tending to furnish any proof of death. The objection was overruled by the court, an exception taken and allowed and the papers taken in evidence and marked Plaintiff's Exhibit 29.

There was then offered in evidence on behalf of

the plaintiff original affidavit of Paul G. Shotswell under date of July 13, 1921; also a letter of Messrs. Hayden, Langhorne & Metzger counsel for plaintiff. Counsel for defendant Prudential Insurance Company objected to the introduction in evidence of these documents and each of them upon the ground that the same were incompetent, irrelevant and immaterial and not tending to furnish any proof of death. The objection was overruled by the court, an exception taken and allowed, and the papers admitted in evidence and marked Plaintiff's Exhibit 30.

There was then offered in evidence on behalf of the plaintiff an original letter dated July 14th written by Messrs. Hayden, Langhorne & Metzger to the attorneys for the Prudential Insurance Company. Counsel for the defendant, Prudential Insurance Company, objected to the introduction in evidence of this letter, his objection was overruled and the paper referred to admitted in evidence and marked Plaintiff's Exhibit #31.

It was then stipulated by and between counsel for plaintiff and counsel for defendant, Mutual Life Insurance [266] Company, that the first claims signed by Maude E. Stewart and the letter written by Frank J. Sardam and sent to Manager W. A. M. Smith in Seattle, were forwarded by said Smith to the Home Office in New York City. (Mr. LANGHORNE.)

Q. Mr. Sardam, in the letter that was offered and received in evidence this morning and written

(Testimony of Frank J. Sardam.)

by Mr. Stewart to his wife under date of March 18th, he spoke about \$86,000 life insurance. Is it not a fact that one of those policies amounting to \$25,000 had not yet reached the point where it was incontestable? A. It was not yet a year old.

Q. It was not yet a year old and no action of course has been instituted on any of those policies?

A. No, sir.

Cross-examination.

(By Mr. KEENAN.)

I don't think I can give off-hand a list of all the insurance policies, both life and accident, that were held by Mr. Stewart at the time of his disappearance. I can give you them approximately.

Mr. LANGHORNE.—I will furnish you a list of the policies and you may insert them in the record. The amount and the beneficiary. There is a little insurance payable to the estate. Judge McKenny will have those. I may have those but I am not certain. The National Bank of Tacoma has one for \$5,000 which was payable to the [267] estate, and they hold it as collateral. Now I haven't got that.

Mr. RUPP.—The administrator has one of the Bankers Life for \$6,000. The policies involved here amount to how much?

Mr. LANGHORNE.—Just in this case \$45,000.

Mr. RUPP.—\$45,000 plus \$25,000, plus \$5,000, plus \$6,000 make \$86,000.

(Testimony of Frank J. Sardam.)

Cross-examination.

(By Mr. RUPP.)

I don't know definitely how many accident policies were held by Mr. Stewart at the time of his disappearance. I could find out. I don't know positively the amount.

It was then agreed between counsel that a list of accident policies should be compiled and supplied for the record.

Plaintiff rests.

Whereupon an opening statement was made by Mr. Otto B. Rupp of counsel for the defendants.

Mr. LANGHORNE.—If the Court please, if it were a jury trying this case I think we would at least have the right to ask that the jury view the premises. Now I hope that counsel will join in asking the Court, if at the conclusion of this trial he has got any doubt about positions, distances and locations down there, [268] that the Court sometime when he is passing through Kalama view that slip and those two boats, and if the Court will let counsel on both sides know we will have the boats arranged there in the same position as they were on that night as near as humanly possible so to do.

Mr. RUPP.—Well, I would certainly be perfectly willing so far as I am concerned for the Court to receive any light that it can upon this case. I will be perfectly willing and I now agree that he may go to Kalama and that he may see these boats. There may be some conflict in the

(Testimony of Orville Makinster.)

testimony as to how they were placed. That might involve some difficulty, but I think it could be obviated. My position in the matter briefly is this: We wrote these policies. If this man is dead we are willing to pay them. If he is not dead we are not willing to pay them. And any light that this Court can get from a physical examination of that site I am perfectly willing that the Court shall have. [269]

Testimony of Orville Makinster, for Defendants.

ORVILLE MAKINSTER, being first duly sworn, testified on behalf of the defendants as follows:

(By Mr. KEENAN.)

I am captain on a ferry-boat between Goble and Kalama, and was so engaged on March 17, 1921. The name of the boat is "Black Jack." I saw and talked to Fred Stewart the banker at Kelso at Goble on the night of March 17, 1921. It was right close to eight o'clock. I could not tell the minute, but it was close to that time. It was dark, as dark practically as it would be at nine o'clock. I asked him if he was going to cross the river and he said "Yes," if he wanted me to take a car over. I said, "I have a boat right here if you are ready to go," and he said he was, he was not going to take the car over, and he came over in a car and he said he was in no hurry, so he asked me then where the telephone office was and I told him right there by the pool-hall. He said he was going to

(Testimony of Orville Makinster.)

call up the Missis then, which he did I guess; he went in there and I didn't pay any more attention to him. I didn't return any more that night to Kalama because there was nothing to go over for. I stayed there that night. I asked Stewart if he was going over there and he said "No," so I remained at Goble.

(No cross-examination.) [270]

Testimony of Wilton Minckley, for Defendants.

WILTON MINCKLEY, being first duly sworn, testified on behalf of the defendants as follows:

(By Mr. RUPP.)

I live at Kalama, Washington, where I have lived for two years. I am a restaurant-keeper. On March 17, 1921, I was on duty in my restaurant in the evening. I went on duty about 5:30 in the morning. I don't think that I heard the whistle which announced the arrival of the ferry-boat at the slip on that evening. I saw on the evening of March 17, 1921, somewhere between nine and ten o'clock an automobile proceeding along the main street of Kalama up from the ferry-slip. I was sitting at the end of my counter, the back end, eating something; I don't remember what. It was an hour when there was nothing doing in the restaurant. It was approximately 9:30. The machine went by, going at the rate of probably twenty miles an hour. I don't know what kind of a machine it was or what size; a dark-colored machine, probably a black one.

(Testimony of Wilton Minckley.)

Cross-examination.

(By Mr. IMUS.)

Q. Mr. Minckley, your restaurant is on Fir Street? If this represents Reid's dock where the "Queen" landed that night, this is Fir Street, your restaurant is in this block, but a little lower down than shown here in the map facing this way; that is Fir Street; this is River Street?

A. This is the alley. [271]

Q. This is the vacant property?

A. The vacant property. The restaurant is 24—34—it starts in about 34 feet.

Q. From this alley?

A. From this alley east.

Q. Facing this way?

A. Facing Fir Street on the north side.

The next street running through here is Fir Street, upon which is the Pacific Highway. The Pacific Highway runs straight through the town running north and south.

Q. River Street is paved this far and is paved one block out this way? A. To the intersection.

Q. Yes, sir. Then there is Elm Street comes one block down the same as this to the Pacific Highway, one block out here?

A. Yes, sir, and on up the hill.

Q. Now this is vacant property and the railroad track on this side of the street and there is no business on this Elm Street excepting a laundry and that would be closed at that time of night, wouldn't it?

(Testimony of Wilton Minckley.)

A. I think it would be; it ought to be, anyway.

Q. But starting in at this alley this is solid business up through the next street and all through this block here for a block facing on to the Pacific Highway? A. Yes.

Q. Do you think that a man that was attempting to slip out of town would go down through this business part of town when he could get out through vacant property and hit the highway up the hill without passing any business houses? [272]

A. I would not.

Testimony of J. D. Chisholm, for Defendants.

J. D. CHISHOLM, being duly sworn, testified on behalf of the defendants as follows:

(By Mr. KEENAN.)

I am thirty-nine years of age. I have lived in Kalama about eight years. I came across on the "Queen" on the night of March 17, 1921, arriving somewhere about nine thirty. I went aboard the "Queen" at Goble. I remember when the boat docked at Kalama. I remember she docked outside the "Elf." I think I was the first passenger off the "Queen" that night. The next passenger was a traveling man who got off right close with me. The traveling man and myself went up the slip almost together. I see on the plat shown me the part indicated "River Street" and the spur track of the railroad and the black strip marked "Depot and Dock" and this black mark projecting out is the slip I have in mind. I think the traveling

(Testimony of J. D. Chisholm.)

man and I came up the slip right close together; there was someone behind us, I don't know exactly, but approximately ten feet.

Q. Now assuming that this black strip marked "Incline" is the slip you came up and the blue strip here marked "Platform" and "Boardwalk" is the walk that goes either way from that incline, indicate to the Court what way you and the traveling man came up, which way you turned and which way the traveling man turned and when you turned? [273]

A. I turned right this way to go this way and along this walk.

Q. Which direction did you turn and go?

A. Right this way, right over this way.

Q. Which direction is that. A. That is south.

Q. Now which direction did the traveling man go when you got there?

A. The traveling man turned towards the depot in this direction.

Q. What direction did the man who was following you—how far did he follow you? Indicate with the ruler how far he followed you.

A. I thought he followed me a little ways on this walk.

Q. And then what did he do?

A. I paid no attention to him until I turned over on the corner turning this way. I looked over my shoulder then to see what had become of him and I seen a man crossing the tracks in that direction.

(Testimony of J. D. Chisholm.)

Q. In that direction. Now describe that man; what was his height?

A. Well, I couldn't tell his height exactly.

Q. In comparison with your own height what would you say?

A. He was a man of ordinary height, probably as tall as I was.

Q. What kind of a coat did he have.

A. I couldn't say. I couldn't say whether it was a long coat. I didn't pay much attention to it. When I saw him turn to go across the railroad track he seemed to be in a hurry. [274]

I saw Fred Stewart on the boat that night. I should judge that the man I saw go across the track would be a man of about the same height as Stewart. I could not say how he was dressed on the boat that night. Stewart wore an overcoat; I noticed that. That is all I saw and I thought that the man whom I saw had an overcoat on.

Cross-examination.

(By Mr. LANGHORNE.)

I remember a conversation I had with Senator Imus and you in Senator Imus' office last summer. I do not exactly recollect what I told Senator Imus at that time in answer to the questions he asked me. I told Senator Imus I was the first man off the boat. I don't think that I told him that I went right up the slip and never paid any attention to anyone else. I told him that I went up the slip and turned away in a hurry; don't think that

(Testimony of J. D. Chisholm.)

I told him that I didn't notice who else got off the boat that night.

Q. Will you swear that you did not?

A. I couldn't swear to it because I couldn't be sure I did not tell him that. I expect I would remember if I said anything like that to Senator Imus at the time in question. I think I told Senator Imus that the traveling man and I went up together. I don't know whether I told Senator Imus that I was in a hurry to get home and didn't pay any attention to anyone else, but those are the facts. If I did tell him that it was the truth. I don't know that I told Senator Imus that I didn't see anyone [275] else and didn't pay any attention to anyone else. I remember he questioned me about what took place when I came over on the boat. I don't know whether I told Senator Imus that Fred Stewart stood on the bow of the boat. I could describe Stewart's position on the boat. After we got out about the middle of the river I was standing out on the bow of the boat in front of the pilot-house when Stewart came up from some position back of me and crossed over to the bow of the boat as if to cross the boat, went past me hurriedly and quickly turned around and jumped over some baggage by the pilot-house and crossed over to the other side of the boat. That was the last time I ever saw Fred Stewart.

Q. Now which way did this person go after you got up the street, which direction?

(Testimony of J. D. Chisholm.)

A. I didn't look; I didn't notice which way he went.

I don't know who he was and I don't pretend to say who he was. So far as I know he might have been someone who didn't get off the boat. I don't say who he was only that I saw a man crossing there.

Q. You didn't tell us that when we talked to you in Senator Imus' office last summer, did you?

A. I don't think you asked me. I had no reason for concealing it. I remember a conversation last week in Senator Imus' office. Prior to coming to his office that day I had been working. I had been with several people; had been around on business. I had been out with Mr. Keenan who represents the insurance company. We [276] went to Woodland. I drove him down in my car. I am not engaged in the automobile business. When I came back Senator Imus asked me to come to his office. I think I remember what I told you there. Mr. Imus asked me some questions; asked me if I had interviewed an insurance man that morning and I told him I had. As to any conversation which had taken place, I told you if you had subpoenaed me I would tell you on the witness-stand. I don't know whether I ever told anyone until I told Mr. Keenan about this man who followed me up the slip. I believe, however, that Captain Reid and I talked about the fact that some man followed the traveling man and myself and that this other man turned and went in the direction in which I

(Testimony of J. D. Chisholm.)

say he did. I could not say when I first talked to Captain Reid about it, but it was approximately two or three months ago. I knew that the matter of Stewart's disappearance had been talked about in Kalama and Kelso and all Cowlitz County for months. I knew that insurance agents had been down there and Mr. Fitch had been down there seeking the light. I presume the first man I told it to was Captain Reid.

Redirect Examination.

(By Mr. KEENAN.)

I believe that Mr. Langhorne was in Kalama the day that you, Mr. Keenan, were there. I don't remember that either Mr. Langhorne or Senator Imus ever asked me at any time or place about a man following me up the slip and turning out into the street. I was in Mr. Imus' office one day last summer. That is the time Mr. Langhorne refers to. Mr. [277] Langhorne was there. I have not talked about this case. I don't talk about anything very much with anybody. I don't know of any particular reason, except that I usually try to mind my own business and keep out of anything that does not concern me. So far as I remember I don't think anybody ever interviewed me as to that man who followed me up the incline, either Captain Reid or at the time I talked with you. I saw the three cruisers on the boat. I think one of them stood right on the bow of the boat where I was. I can't say if he was there all the

(Testimony of J. D. Chisholm.)

time. He was standing there with me and the others, I think, were in the cabin probably before I got on the boat. I noticed the one cruiser standing close to me. I didn't see anything of the other cruisers after we landed. I didn't pay any attention to anyone. I presume that I went up the incline ahead of the cruisers because I was first off the boat. I didn't hear any alarm given about Stewart's being lost.

Recross-examination

(By Mr. LANGHORNE.)

I heard Captain Reid say nothing at that time. I saw him standing there at the slip, at the time I passed him. I heard no call to him and I didn't hear him say anything. [278]

Testimony of John Reid, for Defendants.

JOHN REID, being first duly sworn, testified on behalf of the defendants as follows:

(By Mr. KEENAN.)

I am the owner of the ferry-boat "Queen." I own and operate the boat "Elf."

Q. And is this a fair representation of the depot platform and your slip and the public dock?

A. Well, there is just one public dock there.

Q. Explain the situation there for the Judge.

A. This here dock is the foot of Fir Street here.

Q. You are referring to the two red projecting—

A. Yes, the one that extends the furtherest south. That belongs to the City of Kalama. This other dock here I have got a lease from the Northern Pacific Railway Company over their right of way.

(Testimony of John Reid.)

Mr. KEENAN.—I will mark the first one you referred to as “A” and the one you are talking about now as “B.”

A. (Continuing.) Yes. That is the one I built for myself; had it built rather; and I hold a lease from this dock to this one here on the right of way from the Northern Pacific Railway Company, but the docks are built on state land here.

Q. Now point out to the Court the slip that was used the night the passengers came off the “Queen.”

A. The dark slip is the one that was used.

Mr. KEENAN.—We will mark that “C.”

The incline from the top to the bottom is 130 feet. It is [279] about fourteen feet from the north end of the slip to the south end of the depot. The direction which the passengers take to come up the incline marked “C” and go up Main Street into the town, go south on the ten foot platform right along this walk here. I remember the occasion of my going down to the dock on the night of March 17, 1921. I left home about a quarter to nine and came down town for the purpose of going to Lodge,—the K. of P. Lodge that evening had a smoker. I went to lodge but didn’t know the pass-word; I didn’t get in and went down to the boat. The K. of P. Hall is on the Pacific Highway.

Q. Point to the map where it is.

A. The K. of P. Hall is supposed to be down about here. I think some place on the main street.

Q. Assuming there was a street here?

(Testimony of John Reid.)

A. This is Fir Street here, so this would be the street south of there.

Q. This is a block, assuming the street was here?

A. This would be—we will assume this is the street here, that is the sidewalk on the side here, the K. of P. hall was on the extreme end of that block, in the building, one vacant lot there.

Q. What course did you take to get to your dock?

A. I crossed the street and went over to this street, went over this corner here and I come up along this vacant lot. There was a scow in here and a moving-picture show over on the other side and a little grocery-store on the corner and there was a little scow house in here and the rest of the block, half a block, vacant up through here. [280]

Q. Is that the way you went?

A. That is the way I went.

Q. Then where did you go from there; to the dock?

A. Right across this street crossing over the railroad track to the depot, the depot about right in here.

Q. Did you see a standing automobile any place when you went from the K. of P. hall to the dock that night? A. Yes, I did.

Q. Where was it?

A. It was standing about here. There was some billboards in here. The billboards was in here. That is it. It was about the middle of the billboards. There was one car standing there heading towards the highway.

(Testimony of John Reid.)

Q. Mark that with an "X."

A. Yes, about there. The curtains were all closed on this machine. There was no light on it whatever. There are no buildings on this side of the block where the billboards were. As I turned to the right there were no buildings. This is a half vacant block right here; nothing on it at all. I was standing at the slip on the night when the "Queen" arrived. My purpose in going there was that I came down there occasionally to check up the passengers. In checking up I mean the number that come off, and that night according to my count six passengers came up. I can give a description of the passengers who came up. There was two men who came up together. One was rather tall and the other was a stocky man, and about ten feet behind the first one rather a tall man; he wore an overcoat. When the first two men got up at the top of the slip one went [281] south on the slip and one went to the depot. One went to the right and one to the left. When the third man came up he turned to the right and followed the first man. He was about ten feet behind the first man when he turned. He made another turn before he got to the crossing. He followed the first man probably 75 feet or 100 feet before he made the second turn. He then turned directly across the railroad tracks.

Q. Where was that direction in comparison with the automobile that was standing?

A. The automobile was standing directly left, to the north of that when he crossed there. As I have

(Testimony of John Reid.)

it in my mind the first two men came up together, one right close to the other, and one of them turned off from the slip to the south and come right up along this sidewalk here. The other man turned into the depot. That would be the south here. This thing is all wrong here the way it stands looking to the street. And the other man turned into the depot. The third man came up, as I say, about ten feet behind them and he turned south the same as the first man until he got along, I would say, probably this here block of street. This sidewalk of mine along here is 16 feet on the right of way, and he crossed the railroad track before he got to my 16 feet and went directly across the railroad track.

Q. Point out now where he went?

A. Well, right here is the railroad track right over here.

Q. Point down the way he went.

A. Right over here on to this main street here. That is [282] River Street right there. And after he got on that River Street, as far as I could understand from my eye—It was dark in there. There was a light here though some—there was a light in here. Let me see. Where was that light? There was a light here some place. It seemed that the man come walking north down this way—that is it—walking down this way. There is a couple small houses in here, tool-houses and a little oil-room and there is two shacks this side of that pathway into the railroad and there is one to the south

(Testimony of John Reid.)

of it and he got here to the one to the south and about the time he got here he lost my sight, I didn't see any more of him and I didn't pay any attention to his goings after that.

Q. Point out to the court where the lights were at the dock there that night?

A. The lights of the dock. There is one light at the top of the slip.

Q. It is marked there?

A. Is it marked there? I will get my glasses. (Witness puts on glasses.) Oh, yes, that is on a pole about 16 feet high, that light is. That is supposed to be a hundred candle power light, but that night it was out. We had no light in there that night.

Mr. LANGHORNE.—Where was that you had no light?

The WITNESS.—On this pole on top of the slip, on the south side of the slip, the light was burned out.

Q. Where was the other light?

A. The other light—now this here slip it is changed since this light went in here. This light here was up on the middle of the slip about 60 feet from the boat [283] landing on a 12 foot pole standing up. Now it is down on the slip hanging from the top of the slip, because we had high water last year and the old house was pulled down and it made the change in the light. So this light was on the slip, but this one was out, this top light was out,

(Testimony of John Reid.)

so it made it pretty dark right here at the head of the slip.

Q. Down the dock as you come up the slip where is the light?

A. Right there it is. That is the street crossing. I knew Fred Stewart the banker slightly. I was somewhat familiar with his size and height. The third man I have testified about to my observation looked about the same size as Stewart. He wore an overcoat and a slouch hat. At the time the boat arrived, the weather was bad, raining and blowing. The wind was from the southeast and was practically on their back coming up and when they turned to go to the south the wind was in their face.

I have lived at Kalama thirteen years on March 6, 1922. I have been on the Columbia River, with the exception of one year, since February 7, 1886. During the entire time that I have lived on the Columbia River I have been employed on the waters of that river.

There are very few persons who have been drowned in the Columbia River whose bodies have not been found. I do not recall any person who was drowned in the waters of the Columbia River in the vicinity of Kalama whose body has not been found. I searched the river for Stewart's body for seventeen days. I would say that close to 25 other people endeavored to find his body. These 25 other people had boats and tackle of their own. I didn't make any effort to find the body on the night [284] he was reported drowned. I remember about some

(Testimony of John Reid.)

notice of reward for the recovery of the body being posted. I don't remember the initials of the name which was signed to that notice, but the name was Sardam. Mr. Sardam is the man who testified in this trial yesterday. During the seventeen days that I was exploring the river to recover the body, no one came from Kelso to make inquiry of me as to what progress I was making. Mrs. Stewart never made any inquiry of me as to what progress I was making to recover the body. Carl Hayes brought me a grappling iron at one time. He and I made an early morning search on March 18th. He and I arranged to go out early in the morning just as soon as daylight came. I had the boat in readiness and he came down. I don't know how he got there; a car probably. It don't make any difference, he was there. And he started over on to the Northern Pacific Dock just clear of the landing of the boat and I took the beach underneath the docks until we came to the Barr shingle mill and then we had to go up and go around the shingle mill until we got to the west of it and go down on the beach again because there was rubbish there, and I went down along the beach as far as it was safe to travel on account of wreckage and drift and rotten timber and I had my man and boat laying to the boom outside going along the drift wood along by the Standard Oil Company until this far down and then he came and picked me up at the Standard Oil Company dock; that dock was about six or seven hundred feet from my slip.

(Testimony of John Reid.)

Then we went on the boat until we got on the lower end of the old transfer slip and we took to the beach again, Mr. Hayes and myself, and we went down from there, from the Kelso mill to the lower end of the Mountain Timber Company's slip and then we took the boat again and as the current sets from there to [285] the Oregon shore we decided we would go over what we call the Coffin Rock eddy and anything that floats in the water will—does not cross the river by the current setting that way and we didn't discover anything there. So we went into the Trojan Powder Company's slip which is around the point and looked closely around in there and nothing was discovered. And then we dropped down to an old wharf that had been built by a powder company on the Oregon side and there was a fisherman living there, a scow, and we got over his float on to the beach and we examined all the driftwood and all the surroundings there and cautioned him to look out for the body or anything belonging to it. We got nothing there. So we decided that we would go down to Cottonwood Island and Cottonwood Island is the refuse place for anything that drifts on the Columbia River. Anything that is adrift that don't get on the shore it is going to get on Cottonwood Island. We felt sure we would find some trace, either a hat, coat, or this bag he was supposed to have had. Mr. Hayes and myself went around the island, he going one side and I went the other, and we walked down there amongst the driftwood—I did. I don't know what he did

(Testimony of John Reid.)

on the other side because it is about half a mile across there. But I did, and took a long pole which I poked through the driftwood as I could see it on the beach, and I went as far as I could until I got nothing, a dangerous place on the west end of the island where there was some old trestle work and old jetties and couldn't go any further on account of the water, so we met two-thirds of the way down the island and we gave up the chase. Now on the way back Mr. Hayes and myself had some conversation about Mr. Stewart. Mr. Hayes says to me, he says, "I don't believe that bugger is in the river." So I didn't make any further reply to his question [286] and—I got a little ahead of my story. We were brought ashore in the skiff from my launch. We tied the skiff—the boat up to a piling out in the river and came ashore with a skiff and then we came back and went aboard the boat and we hunted the shore on the Washington side until we got to Kalama again and thought we might pick something up on the way up, but we didn't discover nothing. So I landed Mr. Hayes in Kalama and he went home and I told him I would continue the search, which I did. I dressed up the boat, rigged up sturgeon hooks, lines and hired a man to go out on the boat to patrol with me. We took watch and watch about. He would go out for an hour or two and I would go out and relieve him and we done that zigzag over this supposed course Fred Stewart had disappeared on the boat, and then we took the inshore side of the boat afterward. We covered the

(Testimony of John Reid.)

course of the boat as near as I could figure it out myself. I would go probably a thousand feet each way across the river covering the course in a zigzag way. I would head south or southwest and then come in again southeast and then zigzag up and down. If there was anything there I was going to find it. I found little snags there once in a while. It didn't hurt the hooks any. I lost a hook once in a while. We continued the search down the river from that point, then we got a larger skiff, about seven foot long, from Portland and I put a slip line on so if the hooks caught anything very heavy on the bottom it would only break off a hook at a time, and I dragged from where the boat landed down to the lower end of the Mountain Timber Company slip continuously. That is about a mile and a quarter. The other searchers searched the river further down than that. There were some of them drifted as far as Coffin Rock. [287] That is about two and a quarter or two and a half miles. The channel of the river is on the Washington side. The surface of the ground on the bottom of the river is perfectly clear. The Government has made appropriations to my knowledge for the Columbia River for the last thirty years, hundreds of thousands of dollars each year. Part of the improvements made by the government is in the vicinity of Kalama. They have two large dredgers, one is called the "Multnomah." These dredgers work in the low water entirely. All the time pretty near.

(Testimony of John Reid.)

We have, I should say, the largest commerce of the deep-water vessels, I guess, on the Pacific Coast coming to Portland at the present time, from 500 tons to ten and fifteen thousand ton ships, up and down that river. There is all kinds of craft, boats, and small passenger boats that run there all day—not all day, but there is a couple in the morning and one every night. Lights are maintained by the government on the shores of the Columbia River. They go by the channels and the turns in the river. They are maintained by the people that lives closest to the light. The government pays them so much a month for taking care of the light in that vicinity. As a rule one person takes care of more than one light. If a man is around there and there is a few lights close by him he might have seven or eight. He gets from lamp to lamp by using a fish boat with a gas engine in it. It is a fact that you find these little boats plying up and down the Columbia River all day long. Every place you look you find a boat. The lights are seven day lights, but they generally look them over; but that is not the only boats that travel. There are all kinds of boats traveling on the Columbia River. There is a passenger boat leaves [288] Portland every morning and one every night, and there is a boat leaves for Clatskanie, it leaves every night from Portland—every other night—it goes down one night and up the next; then there is a boat that runs to Kelso every second day. We have got a boat from Kalama every morning to Portland and return; and

(Testimony of John Reid.)

then there is all the traffic of steam schooners and lumber boats all day long. In the summer-time the fishing boats are very thick and they lay at Ladu waiting to lay out their nets and sometimes you will see seven or eight of them waiting for a chance to get laid out. If a large boat is coming up the river and it is loaded or even not loaded, if it gets into shallow water it will draw the water up from the bottom and if there is anything in the bottom it is going to make a move; there is always a suction to the propeller of a big boat that draws the water up.

Q. And that has a tendency to loosen and draw anything up that is on the bottom?

A. Yes, that will loosen or pull away from the shore or anything on the bottom.

The river on the 17th of March, 1921, was seven and one-half feet above normal. The current was running about two miles an hour. The Columbia at that point is not usually swift. Take it last year when the water was up to the highest we have had it for twenty-five years, the current didn't run much over three and one-half miles an hour. That part of the river is affected by the tides from the sea on low water. When the water is down we will say within four feet of zero we will get a back-up from two and a half to three and one-half feet, according to the tide, whether it is [289] a full moon tide or mid-tide. There is a big tide one part of the day and the other is a small one. The tide will back up as far as Portland and raise some six

(Testimony of John Reid.)

to eight inches. The current will run up the river as far as Kalama on low water on the spring tide; when that tide is backing up the river it affects the water clear to the bottom of the river.

Q. And what would the tendency be, if there was a body in the bottom of the river that was caught on a snag or some obstruction as the current went down, as to releasing the body by the water backing up?

A. It would not make any difference whether it was a body or what it was, if there was anything down on the bottom it would clear itself by the flood.

Q. Upwards? A. Yes, by the upwards flood.

There is a little dispute between the men on the boat as to who called me first concerning the disappearance of Stewart. I heard Mr. Pomeroy the first one. Mr. Shotswell says he called me, but I didn't hear him. At the time I heard the call from Mr. Pomeroy, the passengers were all off the slip and gone. Mr. Pomeroy said, "Jack, did you see Stewart come up?" I said, "No." He said, "He left his grip here." I didn't recognize anyone who came up the slip as Stewart. I didn't recognize the first man who came up, but I discovered from Mr. Shotswell that that gentleman was John Chisholm.

Q. And is there any man in Kalama that you are any more acquainted with than John Chisholm?
[290]

A. John Chisholm comes to my house and we play

(Testimony of John Reid.)

cards together and I take a ride in his car and he crosses the river with me quite often and I carry his laundry across over to Goble and I carry a monthly account with him.

Q. You see him many times every day?

A. I see him dozens of times every day.

Q. And yet when he came up that night you didn't see him?

A. I didn't speak to him and he didn't to me.

Q. What was Stewart's habit any time he came up that slip?

A. I don't know that I ever stood on the slip when he saw me, but if he saw me he always said, "Hello, Cap."

Q. His habit was to speak to you?

A. He would just let me know he noticed me, that was all.

Q. I am showing you Defendants' Exhibit "B." Is that a fair representation of the way the boats were tied up that night?

A. With the exception of one thing.

Q. Yes, explain.

A. The bow of the barge was close to the pontoon.

COURT.—Close to what?

The WITNESS.—Close to the pontoon where that headline is on. It was hauled up snug close to, right here, right here, close in here.

Q. But in relation to the "Queen" being tied up to the "Elf" is that a fair representation?

A. That is a fair representation, yes.

Q. Now, about how far is it from the fore end of

(Testimony of John Reid.)

the cabin to the end of the bow of the boat?

A. From the fore end of the "Queen"?

Q. No, the fore end of the cabin of the "Queen" out to the bow? [291]

A. To the bow of the "Queen"?

The COURT.—Do you mean the cabin or the bow?

Mr. KEENAN.—I was referring to the cabin first.

Q. From the front of the cabin how far is it out to the— A. Cabin house door?

Q. Yes.

A. It is seven feet from the forward part of the cabin to the door of the pilot-house.

Q. And there is an alleyway between—

A. And there is an alleyway between the rail and the engine-room. That other little place is the engine-room. There is close to two feet. I don't know just exactly, but it is close to two feet.

The engine-room is in the same superstructure as the pilot-house, but it is to the rear of the pilot-house. The pilot-house sticks over a portion of the engine-room on the inside. The engine-room extends into the pilot-house as that desk is on top there.

Q. How much space have you in the engine-room?

A. We have—that is a little over nine feet.

Q. There is room there for men to stand down in there?

A. There is room for men and the toilet.

(Testimony of John Reid.)

Q. The toilet is down there too? A. Yes.

Q. As the pilot is going in to tie up is it possible for him to see back into the cabin, the passengers' cabin?

A. No, he couldn't at that time.

The COURT.—What is the length of the "Queen"?

The WITNESS.—The "Queen" is 58 feet over all. [292]

Q. And what is the length of the "Queen" from the time it first touches the "Elf" up to the bow of the boat—into the bow of the boat; can you give an estimate—

A. I don't understand that question, Mr. Keenan.

Q. Of course, the "Queen" touches the "Elf," doesn't it? A. Yes.

Q. At what we call the cleat, is it?

A. At the cleat.

Q. How far is it from that cleat up to where passengers can stand towards the bow of the boat?

A. Well, it is about 19 feet from the fore part of the pilot-house to the bow of the boat, the unloading platform. We have got chains on the "Queen" that we take down the chains and we let the passengers out through I would say six feet of an opening.

Q. Now where is that opening in relation to the pilot house where the pilot stood?

A. That opening—the pilot stands up in the pilot-house as high as that lamp and the opening is right in front of him.

Q. Now, how far would the fore end of the cabin

(Testimony of John Reid.)

be from the point where the pilot would be standing as he steered his boat?

A. I didn't get that question.

Q. How far from this door entering into the passengers' cabin on the fore end is it to a point where the pilot was standing in the pilot-house?

A. Well, it was about seven feet.

Q. There is a guard around the water line of the "Queen" isn't there?

A. Yes, then there is a projection, what you call that [293] that is the guard—there is a guard in there with some nosing on the guard.

Q. How far does that project from the side of the boat?

A. The oak nosing is two inch; it is a piece of two inch dressed oak and there is about two and one-half inch of soft wood on the inside, so I would say it would make approximately between four and five inches.

Q. Clear of the outside surface of the boat?

A. Yes.

Q. And that is just above the water line, is it?

A. That is the first guard.

Q. And does that go clear around the boat?

A. That is all the way around right fore and aft.

Q. The windows as indicated in your photograph were merely openings; there were no closed windows in there that night?

A. No, I was made to take the windows out by the government. That is why I took them out.

Q. What was there in the openings?

(Testimony of John Reid.)

A. There was canvas.

Q. How were the windows constructed on the outside as to a person being able to take hold with his hands? A. Oh, quite easy.

Q. Would a person have any difficulty in taking hold? A. None whatever.

Q. Now, how far is the first window from the rear deck—from the rear end of the cabin I will put it?

A. This picture does not give the condition of the boat the night it stood there that the accident happened.

Q. Explain the cabin.

A. This cabin has been rebuilt on the back end since that [294] time, on the aft end of the boat.

Q. Describe it as it was on March 17th?

A. On March 17th I would say it was two feet—

Q. From the—

A. From the little cockpit on the back of the boat by getting on top of the rail to the first window.

Q. How high is the railing there at that cockpit or rear platform?

A. I think to be correct about it, I think it is about three feet four.

Q. Now, could a person step over that railing and stand on that guard, four-inch guard, take hold of the windows and walk around to the fore end of the boat?

A. He could step on seats on there and get over the railing and get onto this guard.

Q. And could he move himself clear forward?

(Testimony of John Reid.)

A. I have done it lots of times.

Q. On the night of March 17th could a person have stepped over that railing, stepped out on the right hand side of the boat and moved forward and gotten in the passenger cabin in the front in one of those doors? A. He could.

Q. Could he have done that while the boat was landing? A. Why, most decidedly he could.

Q. Now could a person have gotten out on that guard from the rear platform and walked forward on the boat and then be out of view from anyone standing on the rear platform unless they leaned clear out several feet?

A. If he leaned on the outside of the boat?

Q. Yes, on the outside.

A. Yes, I could do it. [295]

Q. And anyone standing on the rear platform wouldn't see you? A. Not a bit.

Q. That is on account of the bow of the boat?

A. The boat is built on a line right at this part of the boat; she was a little cut away on the stern and on the bow; when the bow comes in you are out of sight; this cabin would hide you altogether. And the windows are away down low. He could come in that window. There is nothing to stop him coming in that window if he wanted to.

Q. Come in the window? A. Why, sure.

Q. So on that night there was nothing to prevent Stewart or any other man from walking around that guard on the right hand side of the boat, coming in the window, getting in the pas-

(Testimony of John Reid.)

senger cabin after the passengers went out, and then stepping on the railing and getting out of the passenger cabin on the "Elf" and coming up town?

Mr. LANGHORNE.—Have you got him there yet?

A. I want to explain that to you in my way.

Q. You may.

A. The rail on the "Elf" and the rail on the "Queen" for that seven feet is the same height—

Q. Yes.

A. —and if a man wanted to make his getaway on here why, he is out of sight of everybody by lowering his head a little.

Q. Explain to the Court just how he would do that.

A. Well, if he would get out of that door there.
[296]

Q. What door do you refer to?

A. This door right here.

Q. In the cabin?

A. He could lower his head a little bit. The Judge has got one, hasn't he?

Q. Point it out.

The COURT.—I don't understand what you mean by "get out of the door here."

A. The door right in there you see comes out from the cabin, a little door there.

The COURT.—It is closed now?

A. You can't see the door. It is in the forward end of the cabin. This here door is seven

(Testimony of John Reid.)

feet from this door and it is about ten feet from this window up to the pilot-house. A man could easily lower his head here and this here house is pretty near five feet high—it is over four anyway—and get his head down there and slip over that rail there. There is a rail right there on the “Queen” and there is a rail on the “Elf” and he could slip there and come over the rail.

The COURT.—How far is it between the walls of the two cabins in that position?

The WITNESS.—They are right close together.

The COURT.—How far?

The WITNESS.—With the cabin—with the boat being fast they would not be probably more than eight inches.

The COURT.—The walls of the cabins?

The WITNESS.—They are between the two rails.

The COURT.—Between the cabin walls of the two boats?

The WITNESS.—You mean this wall and this here?

The COURT.—Yes. [297]

The WITNESS.—This here—you mean this wall here and that one?

The COURT.—Yes, the space in there?

The WITNESS.—There is a space in there of two and one-half feet and an alleyway in here on the “Elf” and this cabin goes right up to the guard, so it would only be two feet and a half, the outside of the cabin, right up to the cabin on the “Queen.”

(Testimony of John Reid.)

(Whereupon Defendant's Exhibit "B," for identification was admitted in evidence and marked Defendant's Exhibit "B.")

On the night of March 17, I do not know the number of passengers that came aboard the boat at Goble. The timber cruisers left their baggage in the depot as they came up the slip. Exhibit "C" is a good picture of the ferry-boat "Queen." Since that picture was taken the house was rebuilt around the windows and the back portion of the boat. The difference between the boat as shown by this picture and as it was on that night is, the windows were not finished; on the starboard side all these windows they were cut down to the top of the seats and on the port side all the windows were about the same height, but not completed with carpenter work.

In the bow of the boat in front of the pilot-house there is room for two automobiles and three or four motorcycles. Exhibit "C" is received in evidence. [298]

Cross-examination.

I have lived in Kalama thirteen years. I lived in Astoria about eighteen years. I was in the shipping business. I have been operating the "Queen" across the Columbia River since May, 1909. I did not know Fred Stewart very well. I know that he lived in Kelso and was a banker. I have probably seen him crossing the river ten times. I think I saw him in Kalama once or twice in his life. I never met him in Kelso.

(Testimony of John Reid.)

When the boat came in on the evening of the 17th of March I was standing at the head of the slip. I had come from the depot where I had been talking to the operator as it was a stormy night. When the boat came in she had her lights on. The light was also burning at the middle of the landing. I recognized Defendant's Exhibit "B." I helped them rig the boats there. It is a fair and accurate representation of the boats. When the boat drew up to the landing I had a full and fair view of it.

Q. If there had been anybody hanging on to that little three-inch railing there would not have been anything on earth to prevent your seeing them would here? A. Yes, there would.

Q. What?

A. You look over your picture and you will find out.

Q. You answer the question.

A. You couldn't see them.

Q. Why?

A. Because they were hidden by the house on the "Elf."

Q. Give me that last picture I showed you.

A. Here they are. [299]

Q. Let me have the one I handed you. Do you mean to say that the cabin on the "Elf" would have hidden anyone?

A. That will hide it from the top of the slip.

Q. But anyone coming in hanging on there would be in full view of anybody that might be down there on the "Elf"?

(Testimony of John Reid.)

A. Now, Mr. Langhorne, there was no lights on the bottom of that slip and I haven't got cat's eyes either.

Q. I say if anybody had come in on the "Queen" hanging on to that little three-inch strip, supporting themselves by their hands onto the windows, they would have been in plain sight of anybody that happened to be standing on the "Elf."

A. If they were standing on the "Elf"?

Q. Yes. A. Yes.

Now this boat is swung in purposely at the bow of the boat for the purpose of letting the passengers off when you are putting baggage off, but on a man making a landing coming up the river its bow is extended off from the other side from the landing of the boat forward. The boat comes in so shape and out of the center, the stern of the boat here. This door to the house swings in close to this rail and then two rails come directly together. A man opening that door can come out there and step from that door and throw his legs on to the top of the rails and he is on to the "Elf." When I heard Captain Pomeroy call that Mr. Stewart was missing I walked leisurely down the slip. Mr. Pomeroy and I went to the boat. He was on one side of the boat and I around the other on the inside only. I didn't make a good search because it didn't interest me very much. I didn't ask Pomeroy and Shotswell how many passengers they took on to Goble. I [300] didn't have to.

Q. All right. An alarm had been sounded by

(Testimony of John Reid.)

them that a man was missing and do you mean that you did not check up with them the number of passengers that got on at Goble? A. I did.

Q. When did you?

A. A couple of weeks afterwards I checked up my account.

Q. You waited a couple of weeks to find out of Pomeroy and Shotswell how many passengers they took on at Goble? A. I don't check them at all.

Q. Captain Reid, did you wait two weeks to find out of Shotswell and Pomeroy how many passengers they had taken on that boat?

A. They never told me and I never asked them. Probably ten minutes after the boat came in I telephoned Sheriff Hogett. I stated to Sheriff Hogett that Stewart was missing.

Q. When did you tell Shotswell and Pomeroy that you counted six passengers coming off of that boat. A. I never told Pomeroy.

Q. When did you tell Shotswell.

A. I told Shotswell probably a few days before this trial came up.

I kept that matter locked up in my own hard from March, 1921. The only one I told was my wife. I told her when she checked up the books. I never told Sheriff Hogett or William Stuart, prosecuting attorney of Cowlitz County that I counted six passengers coming off the boat. I know that Mr. Stuart, the prosecuting attorney of Cowlitz County never interviewed me in August of 1921 about how many [301] passengers came up the

(Testimony of John Reid.)

slip off the boat. I never told Stuart, the prosecuting attorney, that Stewart could not possibly have gotten off the boat without my seeing him and that only five passengers got off and that all the talk about Stewart getting off the boat unobserved was bunk.

I know Lawrence Perry, formerly the county treasurer and county clerk of Cowlitz County. I did not tell him on the morning after Stewart's disappearance that he (Stewart) was in the river and that only the three loggers, Chisholm and the drummer came up the ship.

I had an interview with Mrs. Stewart about August 13, 1921, concerning the disappearance of her husband. I did not say to her, "My testimony will kill all these wild stories they are circulating about Fred Stewart's disappearance." Neither did I tell her that only the three timber cruisers, Chisholm and the drummer came up the slip. I did tell Mrs. Stewart that as a friend I would help her, provided there was nothing else come into my mind at that time to change it.

Q. Well, what changed it.

A. Well, there is lots of results changed it.

Q. I want you to tell the Court.

A. I seen the poor people that had suffered in this case and lost their money and was destitute, and *my know* that those six men come off that boat, why should I shield this man if he was the sixth man. Why should I do it. Therefore I changed my mind, and Mrs. Reid told me, she

(Testimony of John Reid.)

says, "Jack, you are a fool for to stand this thing, to spend your money and your time on this man's body when you know there was six men got off that boat," and that [302] is why I changed my mind.

Yes, I searched the river for seventeen days with my boat, hunting for Stewart's body. I did that to convince myself, to make sure that Mr. Stewart was not in the river. Yet I told nobody but Mrs. Reid.

Q. Why didn't you tell William Stuart, the prosecuting attorney.

A. I wouldn't tell him anything.

Q. Why didn't you tell Sheriff Hogett.

A. I wouldn't tell him anything.

Mrs. Stewart came again to see me in March of this year. I don't know what dates they were. She talked with me last week. We were alone at the time. She asked me why I was now telling that six men got off the boat. I don't remember what I told her. I was scared of her. I thought she had a gun. I told her there were six men got off the boat.

Q. Did she not then say to you, "Why did you tell me that only five men got off the boat when I interviewed you in August or September of last year.

A. I never told her there was five got off the boat.

I was averse to telling anybody that six men

(Testimony of John Reid.)

got off the boat as I didn't want to have anything to do with this case.

I know Edward D. White, formerly deputy sheriff. I did not tell him four or five days after the disappearance of Stewart that only the three loggers, Chisholm and the drummer got off the boat. I never told Grover Thornton the night of Stewart's disappearance that Stewart did not get off the boat. [303]

I know W. S. Carson. He was one of the fishermen that was out looking for Stewart's body. I showed him where it would be best to look for the body.

Q. And at that time you carried around in your breast the secret knowledge that six men got off the boat? A. I did.

I know Carl Hayes. He brought me some grappling hooks to use in searching for Stewart's body and I made use of them. The search that I made for the body probably cost me \$50.

I did not tell Carl Hayes on the night of the 17th of March that only five men got off the boat.

I instructed Captain Pomeroy to make a report to the government of the death of Stewart. [304]

Redirect Examination.

I have no idea of the number of times that different people asked me about this accident since it happened, probably hundreds of them. I never did, at any time, take pains to explain to any of those curious people just what I saw and what I heard on that occasion. I did not think it was

(Testimony of John Reid.)

their business to know my business. I had a reason for not talking about this accident to everybody. I did not want to have anything to do with this case. I wanted to keep out of it. That was the only reason, that I wanted to be entirely out of the case and not in it. When there are only a few passengers on the boat, they are all ready to get off as soon as the boat stops. Mr. Imus, associate counsel for plaintiff spoke to me about making an affidavit.

Q. What did he say to you?

A. "Well, you know, it is the same old story again, Cap." They all call me 'Cap,' you know. He says, 'Cap, it would do me a great favor,' he says, 'if you would get you and your boys for to give me an affidavit that Stewart was lost off that boat.' 'Now,' I says, 'Mr. Imus, the other boys can do just as they please, but,' I says, 'I will give you no affidavit.' Now that was one conversation with Mr. Imus." I never interfered or made any suggestions to Shotswell or Pomeroy about testifying or making affidavits. I had a subsequent conversation with Mr. Imus. "Mr. Imus came down there—now I can't remember the date of that, but it was some place probably a month after—and he said that he had word from his attorneys—friends in Tacoma I supposed. I didn't know who the attorneys were. I didn't know that Mr. Langhorne was interested in this [305] case at that time. He says, 'Now, Cap,' he say, 'it would do me a great favor and,' he says, 'it would be a

(Testimony of John Reid.)

big help to me,' he says, 'if you would give me the affidavit that Stewart was drowned.' I says, 'Mr. Imus, I wouldn't give it to you.' If you want me to tell all this case I will tell the whole thing."

Recross-examination.

(Mr. LANGHORNE.)

I wanted to keep it forever a secret that six men got off the boat but I changed my mind. I changed my mind the day they refused to send me that 100 gallons of oil, which was about the 15th of April. I then told Mrs. Reid and nobody else until about the 15th of March, 1922. I then told Mr. Bryce. At the time I told him we were in his office at Portland. Mr. Bryce is here in the courtroom. [306]

Testimony of B. K. Bartleson, for Defendants.

Thereupon, the defendants called as a witness in their behalf B. K. BARTLESON, who, being duly sworn, testified as follows:

I have lived in Kalama eleven years, I am a fisherman. I have been on the Columbia River since 1895, fishing all the time. A number of fishermen got together for the purpose of clearing a space of ground on the bottom of the Columbia River for fishing purposes at that particular place, that is a drift. This man Hansen, who testified, was employed by us as a diver. This drift was located one-third of a mile below the Kalama dock and extended from the Washington shore out about 500 feet and goes to Kalama River, about one mile and

(Testimony of B. K. Bartleson.)

a half long. In the fall of 1920 and before March 17, 1921, we cleared this drift of snags and chunks and whatever obstruction there was on the bottom so the net could drag on the bottom for catching salmon. On March 17, it was pretty well cleared of obstructions. The outside of the river channel is practically all sand and on the inside of the drift near the shore it is all clay. Just beyond the drift that we had there was another, the Kalama drift which was alongside out. In all my experience in the Columbia River, I know of only two bodies of drowned persons that were not recovered. The current at Kalama in the Columbia River in low stage is about two miles an hour. At certain stages of the water the tide comes up this river. That tide runs in the bottom as well as on the top. If a body were caught in a snag floating down the river, I judge that the tide would help [307] move it from anything it was lodged against, the current running up stream. I have seen the tide run as far as two miles up the stream at Kalama.

Cross-examination.

If a body should be lodged between two snags or the clothing hooked on to a sharp root or snag, then the effect of the tide would not raise the body.

Of my personal knowledge I know two bodies that went into the river that were not found. I may be that a great many bodies went into the river that I never heard of which were never found. I just tell my own experience, just what I personally know. The drift that I spoke of starts at the foot

(Testimony of B. K. Bartleson.)

of the old incline, right at the very last dolphin in the old ferry, which is half a mile down stream from Reid's boat landing. From there it extends out into the river about 500 feet, and down the river to the mouth of the Kalama River. The present ship channel is out about 1,000 feet from the depot. It bears towards the Washington shore.

Q. Now every time there is high water the river is above, going above, out of the banks, the raising up catches logs and stumps and roots and brings them into the channel and into the river and washes them down, and as they go they become more or less waterlogged and sink as they go along during the high water? A. Yes.

On the 17th of March, 1921, the Columbia River was rising very fast. Possibly there were snags and chunks being deposited during that period. [308]

Redirect Examination.

The Kalama Drift is 900 feet wide and our drift 500 feet.

Testimony of Captain Simpson, for Defendants.

Thereupon, the defendants called as a witness in their behalf CAPTAIN SIMPSON, who, being duly sworn, testified as follows:

I have lived in Kalama thirty years. I was pilot on the ferry-boat "Tacoma," the ferry-boat that was owned by the railroad company and carried the railroad cars across the Columbia River. I was Captain of this ferry-boat for twenty-five years, practically from its first trip to its last. I have lived on

(Testimony of Captain Simpson.)

the Columbia River forty-five years. I should say that the bodies of persons drowned in the Columbia River during all my experience were usually recovered. I do not recall any specific instance where the body was not recovered. I remember the instance of a man being practically drowned at Kalama on one Christmas Eve. I was alongside the ferry-boat. I went down twice after him and was in the water each time; I finally brought him up and he subsequently revived. As a rule the March freshet lasts only about four days, the real flood in the Columbia River takes place later in the year, April, May and June. From my experience in the river, I do not think that the bodies of persons drowned always go to the bottom. I have been familiar with the river for a great many years. I draw Defendant's Exhibit "D" as a rough map showing Cottonwood Island and the channels of the river in the vicinity of Kalala where the ferry-boat runs. "The river bank runs southeast by east, in this direction, until it gets down to the Mountain Timber Company's mill and then it sheers off to the mouth of the Kalama River in [309] that direction, which forms a bight in here. The Kalama River came in this direction. Right opposite Kalama there is a long shoal island here, there is a shoal at the head of the island and the island itself coming that shape, the Oregon shore on this side. There is a channel down the Oregon side and there is a channel down the Washington side. The force of the water runs down here and then sheers off to

(Testimony of Captain Simpson.)

what they call Mount Coffin on the Oregon side. This is a bluff. That in turn is sheered off toward Cottonwood Island. The course of the ferry-boat, if this is Goble, would be across here; that is it crosses this deep water channel and strikes the shoal. There is a heavy shoal comes around nearly all the way across to the Washington shore. The ferry-boat course is across here and then straight up here. Is that what you want?" "Cottonwood Island is shown here. This would be the head of—this is what they call Coffin Rock. Coffin Rock is right here. This is a high bluff right here, and the head of Cottonwood Island here. Then comes another slough down in here, what they call Cottonwood Island Slough. The river is divided after it sheers here. Part of it goes down through here, but the main channel goes down the Oregon side." The place marked "B" is the bluff that I have spoken about; the place marked "C" is Cottonwood Island; and the Slough is the place marked "D"; Coffin Rock is the place marked "R"; the place marked "G" is Goble; the Sand Island in front of Kalama is marked "I"; the mouth of the Kalama River is marked "X"; the place designated "Island" at the bottom is shoal water here from the island. The tendency of the water down this side is toward the Washington shore and the tendency on this side is toward the Oregon shore. But currents meet here and form slack water which forms a shoal. The place marked "M" is where these currents meet. That would be where the turn is. There

(Testimony of Captain Simpson.)

is more or less of an eddy either way along these [310] Island all the way down. The currents reverse at the point marked "N." From my experience with this river, an object like a human body fully clothed with an overcoat on falling from the ferry-boat at the place described by the witnesses, would be found "about Cottonwood Island." This Sand Island in front of Kalama in ordinary weather is anywhere from a mile to a mile and a half long, in high water about a half a mile. At the time I went into the water to rescue this man that I testified about I was sixty-five years old.

Cross-examination.

(Mr. IMUS.)

I am not a diver. I have never been down to the bottom of the river to see what the formation was. There may have been quite a number of people that were drowned in the river and their bodies never recovered.

Testimony of Daniel McCoy, for Defendants.

Thereupon, the defendants called as a witness in their *half* DANIEL McCOY, who, being duly sworn testified as follows:

My name is Daniel McCoy, I have lived in Kalama since 1910 and in the Columbia River since 1888. I have been a fisherman since I have been on the river. From my experience the bodies of people drowned in the river have been found. I have had experience in clearing the bottom of the river for fishing. That the drift as described

(Testimony of Daniel McCoy.)

was good. I worked a day and a half searching for the body of Stewart. I should judge there were five or six other boats searching for his body, different rigs. Some of them worked there every day for a whole week. The way we dragged for his body was: "We took two boats, we took a line about 200 [311] feet long and we have sturgeon hooks what we use for catching sturgeon there—they are a good big hook about that length, about two inches, with an inch and a half or two inch circle—we put them every twelve inches on this line, we put a weight on each end of that and a boat on each end of it to keep it stretched out and we drug that down the river." The others had a similar outfit some of them used barbed wire. I have no reason for believing that Stewart's body was recovered up in the river at the time we were dragging for it. The way I figure it in my mind, if he drowned where they claim he went overboard he would be on the bottom before he got to the Kalama river.

The captain on the ferry-boat said he last saw Stewart after they entered the dolphin at the foot of the Island and had headed for Kalama. He showed me about where he last saw him. By the dolphin I mean the point marked "M" on Defendant's Exhibit "D."

Cross-examination.

(Mr. IMUS.)

Kalama River is about two miles from the dock situation in the town of Kalama. It is below the

(Testimony of Daniel McCoy.)

lowest point touched by the "Queen" in making the round trip between Kalama and Goble. The Columbia River is about a mile and an eighth wide straight across from Goble. When we dragged the river with the hooks we went down as far as the mouth of the Kalama River. As far as I know the river was not dragged any lower down than that. If a body was in the bottom of the river and covered up with three or four or five inches of sand or dirt I don't think sturgeon hooks would plow down a foot or a foot and half in the ground.

I have heard of bodies going into the Columbia River that were never found. [312]

Redirect Examination.

(Mr. RUPP.)

I have no reason to believe that the body of Stewart, if he is in the river, was covered up with a foot of sediment. I didn't drag below the mouth of the Columbia River for the body because I didn't think it would be policy. I figured that if he went overboard where they claimed, that he would be on the bottom before he got that far. All I know about where he went overboard is what Captain Pomeroy told me.

Testimony of George Elwood, for Defendants.

Thereupon GEORGE ELWOOD, called as a witness in behalf of defendant, being duly sworn testified as follows:

My name is George Elwood, I am forty-eight

(Testimony of George Elwood.)

years old, and am traveling salesman. I have lived in La Verne, California a little over two years.

I moved from Cottagegrove, Oregon to LaVerne, before that I lived at Kelso, Washington and other towns on the Columbia River near Kelso for several years. I was born in Michigan, moved to Portland, Oregon with my parents and lived in that city about twenty-nine years. I lived at Kelso about two years. I left Portland about 1904 or 1905, I went to Kelso. When I lived in Kelso and the other towns near by, I was a barber and while located in Kelso, I shaved Mr. Stewart at least twice a week and I saw him daily. I saw Mr. Stewart before going to California in February, 1920. I talked with him then. I was familiar with his appearance and his walk then. The next time I saw Mr. Stewart was on March 24th, 1921, at Hanford, California. Hanford is Southwest of Fresno about forty miles. I happened to be in Hanford because I was making the valley with my line, was there as a traveling salesman. I was in Hanford the biggest part of three days. I never was in Hanford before. "I was standing in the barber-shop with my hand against the casing between the door and the window, a swinging door, I was talking to [313] the barbers, and as I looked out I saw Mr. Stewart in company with someone else and he was virtually facing me, but turning to go back, and I turned around to the barbers and I says, 'There is an old friend of mine. I am going out.' I stepped out the door

(Testimony of George Elwood.)

and he was walking fast towards an automobile and as he got behind the auto or right by the automobile he turned directly facing me and turned his head quick again before I had an opportunity to hail him and got in the automobile and went away." That was Frederick L. Stewart who formerly lived at Kelso. I noticed Stewart's walk at that time. He has an individual walk, he stood more erect than I do, he had a quick movement about him. It was very characteristic of him. I never noticed exactly the same thing in other people. His habit of walking and standing is he simply squared himself, he always walked erect, he carried his head rather stady, would move it slightly. He had, on that day, a gray suit on, a gray overcoat and a cap similar, a soft cloth cap. While I lived in these other towns near Kelso, I hardly think there was a year I did not see Mr. Stewart. I met him in Portland a couple of times while I was there. I knew him altogether from 1904 to 1920. He had a habit of recognizing me, he was always pleasant, if I did not see him he always saw me. Witness is shown Defendant's Exhibit "E" and states: This is a fair picture of the barber-shop where I was standing on the sidewalk when I saw Stewart. At that time, I was standing where the picture of the man appears in the right of this picture, just back of the bootblack stand. The picture of these two men in the picture standing represents the location of Stewart and the man who was with him, at that time. I am now

(Testimony of George Elwood.)

examining Defendant's Exhibit "F." It is a fair representation of the street [314] and it shows an automobile standing about where I saw the automobile stand that Stewart got into, it stands exactly near as I can tell. I am now looking at Defendant's Exhibit "G." It is a fair photograph and representation of the street showing the barber shop where I was standing and also the automobile that I saw Stewart get into. Exhibit "E," "F" and "G" received in evidence.

Cross-examination.

(Mr. LANGHORNE.)

I left Kelso for good in 1906. I went from there to Stella. It is about fifteen miles from Kelso. I lived in Stella for two years. I then went to Portland. I lived there about two years. I went to Portland from Clatskani which is situated on the Columbia River halfway on the Oregon side. I lived there until 1913. I moved to Forest Grove, Oregon, and went to work on the road. Forest Grove is about twenty-six miles from Portland. I then moved from there to Cottage Grove, Oregon. When I left there I went to California. I went to California in 1920. I saw Fred Stewart in Kelso in February, 1920. I met him in Portland in 1914, I think. I didn't see him between 1914 and 1920. I saw him in Murphy's barber shop in Portland in 1914.

I was in Hanford, California, on March 22, 1921. I left Fresno on March 21st and got into Hanford in the evening. I don't recall the time. I was in

(Testimony of George Elwood.)

Fresno on March 20th. At that time I had an order book with me. I had that same book when I was in Kalama in May of last year. I put that book down in my house in La Verne, California. I [315] wouldn't swear that Mr. Wilson never saw it. I first met Mr. Wilton in Ogden, Utah. I made and signed an affidavit at that place and gave it to Mr. Wilton. That is my signature attached to the affidavit which you show me. I stated in that affidavit that while I "was standing in a doorway in Hanford, California on or about March 24th, I saw a man whom I took to be Mr. Frederick L. Stewart." I did not talk with the man I say was Stewart. At the time I caught sight of him he was about thirty feet away, as near as I can tell.

Q. Crossing the street?

A. No, sir; not crossing the street; no, sir.

Q. Standing still?

A. No, sir; turning.

Q. Turning? A. Yes, sir.

Q. Away from you? A. Yes, sir.

Q. Turning away from you?

A. Turning away from the way I was facing.

Q. Which way did he go then?

A. Down the street from me.

Q. Down the street from you with his back to you? A. Yes, sir.

There was someone with him who was shorter and rather chunky built. I have never seen this party before to my knowledge.

I was in Kalama on May of last year. I think

(Testimony of George Elwood.)

it was April but I am not sure. I was in M. C. Taylor's barber-shop while I was in Kalama. I might have discussed the matter of Fred Stewart's disappearance while there. I don't think I [316] said while in Taylor's barber-shop in Kalama in April or May of 1921 in the presence of George M. Campbell that I saw a man I took to be Stewart in Hanford, California on February 22, 1921, and that I knew it was that day because it was Washington's birthday. I don't know Campbell or Lawrence Perry but I know the Taylor brothers.

Q. Did not one of these three persons then say to you that Stewart did not disappear until the night of March 17th, and then did you not go and get your order book and look at it?

A. No, sir.

Q. You swear that nothing of that kind happened?

A. No, sir, I never referred to that order book until I got into Kelso.

Q. And did you not say there in the presence of these men or in the presence of Lawrence Perry that while you thought you saw Stewart in Hanford, California, you could not swear to it?

A. I may have.

After I left the barber-shop I went to take the train to Kelso. I don't know Paul Shotswell. I have seen him before. I don't remember whether I engaged him in conversation after I left the barber-shop about Stewart's disappearance.

Q. Did you not in that conversation with Shots-

(Testimony of George Elwood.)

well say that you thought you saw Stewart in Hanford, California, and didn't Shotswell challenge your statement and say that Stewart was drowned and did you not reply by saying that you were not positive it was Stewart you saw in Hanford, California, or words to that effect?

A. No, sir. [317]

After I got to Kelso I went to Mr. Hunt's barber-shop. While there some one wanted me to make an affidavit that I had seen Stewart in Hanford, California. I don't know who he was. He was lying in the barber's chair at the time. I don't think I told the party that asked me to make this affidavit that I would not make it because I might be mistaken as to the identity of Mr. Stewart. After I left Kelso I went to Aberdeen, Hoquiam and then to Olympia.

I know Dr. Byrd. I accidentally shot him at one time. I met Dr. Byrd in Olympia when I returned from Grays Harbor. I did not tell Dr. Byrd in the conversation I had with him that I thought I saw Stewart in Hanford, California, but would not positively swear that it was him. I remember distinctly the last thing that I said to Dr. Byrd was that if the man I saw was not Fred that his wife would not want to see this man I did see because she would claim him. After leaving Olympia I came to Tacoma and met Frank Sardam and Mr. Fitch. The three of us went up to your office.

Q. Did you make this statement in my office under date of May 14th in the presence of myself, Frank

(Testimony of George Elwood.)

Sardam and H. G. Fitch: "My name is George Elwood. I live near Ramona, California. I travel for a barber supply house. I once lived at Kelso. Knew Fred Stewart when I lived there. Have been away for several years. I was in Hanford, California, on March 24th. I think that was the date. I was in a barber-shop and looking into a glass on the rear wall. I caught sight of a man going diagonally across the street that I thought was Fred Stewart. I went to the door and called to him but he paid no attention to me. I walked out on the sidewalk and then [318] I thought he did not want to recognize me. I did not talk to him. He was some distance away. Of course I am not positive it was Stewart. I would not swear it was. I have been mistaken about the identity of persons several times. Not long since I walked up to a lady on the street that I thought I knew and greeted her, but she did not respond, and I took another look and found I was rankly mistaken." Did you make that statement in my office?

A. I never made such a statement. Some of it is true but some of it is absolutely untrue.

I did not tell you at that time that I would not swear that it was Fred Stewart. I told you I would not give you an affidavit at that time. When I got to Utah I came to the conclusion that the easiest way out of it was to make the affidavit as I was being annoyed by everybody. I gave the affidavit to Mr. Wilton. I next saw Mr.

(Testimony of George Elwood.)

Wilton in Hanford, California. I met him there by arrangement.

When I was in Hanford, California, in March of 1921 a barber to whom I sold some goods gave me a check for \$5. I don't remember the date of the check.

Mr. KEENAN.—It is attached to the disposition. (Witness shown check.) It is dated March 21st.

Q. Now after looking at the date of that check will you swear that it was on the 24th day of March, 1921, that you were in Hanford? A. Yes.

Q. That you saw Stewart there on that date?

A. Yes, I will swear to that, on or about the 24th, as near as I can tell.

Q. How close to the 24th? [319]

A. The 24th.

Q. The 24th?

A. To the best of my knowledge on the 24th,

Q. How?

A. To the best of my knowledge on the 24th day of March.

Q. Well, what have you got in the way of memoranda about you, or have you had, to show it was the 24th day of March?

A. I haven't anything but that check.

The man that gave me the check is a friend of mine. I know him. I would believe his word. I would say that if he testified that it was the 21st of March that I went out on the street and said something about seeing a man from Washington, I would say he was telling something that was

(Testimony of George Elwood.)

not true. He could be mistaken at that.

I know Benjamin Vienna but he was not in that shop.

I know George Hedges. He is the party that gave me the check for \$5.

It was between one and two o'clock in the afternoon that I saw Fred Stewart on the street.

When in Hanford with Wilton he had a photograph of Fred Stewart similar to the one now shown me.

Q. Now you say you saw Fred Stewart in 1920?

A. Yes.

Q. How did he wear his hair then?

A. In 1920 he wore it combed back.

Q. You heard me say that here yesterday, didn't you?

A. I heard you state that here yesterday?

Q. Now you—

Mr. RUPP.—Let him answer. [320]

A. I don't remember you stated that here yesterday. I may not have been in the room.

Q. Did you tell Wilton that he did not wear his hair that way then?

A. No, I was not interested in the case. I am not working in the case.

When I was in Kelso in May, 1921, I met Mr. Hill who is a barber. I know him slightly. I did know Mr. Crouch the druggist slightly. I did not tell Crouch that I would not sign an affidavit about seeing Fred Stewart in California unless they guaranteed me \$10 per day and all ex-

(Testimony of George Elwood.)

penses. I never told John Hill that either. I never made that remark to my knowledge. I said I could not afford to spend my time unless it amounted to about that because I was making that much money.

Mr. LANGHORNE.—I offer this affidavit in evidence.

Paper referred to admitted in evidence and marked Defendants' Exhibit 33.

I came here from Laverne, California, to testify in this case.

Redirect Examination.

I saw Mr. Crouch soon after I got in Kelso in April or May. I had a conversation with him about seeing Stewart in California. He asked me about the date. I showed him my order book where the date appeared. Crouch is living in Kelso now. I have no distinct recollection of any of the conversations I had with any of the people. "Now, take Dr. Byrd there for instance, thinking that he was a good friend of mine, I naturally told him what I absolutely knew about it." Other times people harassed me I would put them off probably the easiest way I could and get rid of them. I didn't have time to do that and my business too. In the letter that was the means of bringing me into Mr. Langhorne's office there was enclosed a Traveler's Insurance Company's card. I have lost the letter, it stated in substance they wanted to see me about the [321] Stewart case. The party who signed the letter proposed to represent the

(Testimony of George Elwood.)

Traveler's Insurance Company. He enclosed his card and told me to call a certain telephone number when I got to Tacoma. I met these men in Mr. Langhorne's office. Mr. Langhorne asked me questions and I answered them just about as I answered other people. I refused to make an affidavit. I could not have made an affidavit and sworn to the truth if I were to say that I did not see Stewart in California.

"Q. Now this affidavit that Mr. Langhorne has called your attention to the first sentence of which he read, I will now read the next sentence: 'George Elwood, being first duly sworn, deposes and says that I was standing in a doorway at Hanford, California, on or about March 24, 1921, when I saw a man whom I took to be Mr. Frederick L. Stewart and another man leaving a near by restaurant. I am positive it was Mr. Stewart. When I reached the sidewalk he was starting around the automobile to enter from the left side, while his companion was opening the right-hand door. When Mr. Stewart started around the automobile he looked directly toward me. As I started to hail him he turned his head like he didn't want to recognize me. The automobile then left at a rapid pace. I fully believe he had recognized me but did not care to speak to me, which I could not understand, as we were old friends. At this time I knew nothing about Mr. Stewart's trouble at the Kelso State Bank at Kelso, Washington, but was later informed of his trouble by a friend upon

(Testimony of George Elwood.)

my reaching Cottage Grove, Oregon, about a month later.'

Q. Was that true then? A. Yes, sir.

Q. Is it true now? A. Yes, sir.

Q. Tell the Judge who dictated that statement.

A. I did. [322]

Q. Did Mr. Wilton have a thing to do about it?

A. No, sir. He told me to give it from my own free will. He said, 'All we want to know, Mr. Elwood, is the truth and just give it in your own way.' And that is the way I dictated it."

Recross-examination.

When I went to Kelso I showed Crouch my order book. I think he asked me about it. He was asking me about the date that I saw Stewart and I says, "If I have a certain order book here in my grip I can show it to you." It was the same order book I had at Kalama.

Q. You know your order book would show you when you were in Hanford?

A. I knew when Mr. Crouch was talking to me that I could show him that I was there.

Q. Well, you had it when you got to Ogden, Utah?

A. Well, I believe I did.

Q. And you had it when Mr. Wilton was there?

A. Yes, sir.

The COURT.—I want to straighten out something. You came back to Cottage Grove after you saw this man at Hanford?

The WITNESS.—Not back to Cottage Grove, but on my way.

(Testimony of George Elwood.)

The COURT.—You worked your way up until you got to Cottage Grove?

The WITNESS.—Yes, sir.

The COURT.—You say you got there about a month after?

The WITNESS.—Something like that.

The COURT.—How long were you there?

The WITNESS.—I Sundayed there. I have a sister-in-law there. [323]

The COURT.—Mr. Stewart was not married when you were in Kelso—when you were barbering?

The WITNESS.—No, sir.

The COURT.—But he was married when you saw him in 1920?

The WITNESS.—Well, I understood that he was. I never met him before.

The COURT.—But you understood he was married?

The WITNESS.—Yes.

The COURT.—And you didn't learn about the claim that he had been drowned until you got back to Cottage Grove?

The WITNESS.—No, sir.

The COURT.—How long after you got to Cottage Grove until you came to Kelso?

The WITNESS.—Well, you see it would take several days because I made Portland. It was not very long.

The COURT.—A week later?

The WITNESS.—It would probably be a little more than a week.

(Testimony of George Elwood.)

The COURT.—Two weeks?

The WITNESS.—Well, somewhere around there. Sometimes I would take a week in Portland but this time I only spent one day.

The COURT.—After the time you learned at Cottage Grove that Stewart was supposed to be drowned did you do anything to communicate with his wife or anybody at Kelso that you had seen him at Hanford?

The WITNESS.—No, sir.

The COURT.—Call your next.

Deposition of Spiro Papilian, for Defendants.

Thereupon the defendants called as a witness in their behalf SPIRO PAPILIAN, who, being duly sworn, testified as follows by deposition taken at Hanford, California, on stipulation of all [324] parties to the action, at the taking of which deposition plaintiff was represented by Maurice A. Langhorne, Esq., and the defendants by S. A. Keenan, Esq.:

My name is Spiro Papalian, I am forty-six years of age and in restaurant business, since 1905, here in Hanford. I was in that business last March 20 to 24, 1921. I was in the restaurant operating it at that time. Defendant's Exhibit "C" appears to be a picture of the man that was served in my restaurant March 23 or 24. It looks like exactly the party that was waited on. He was pretty nearly six feet tall, he was slim, not very heavy, his face looked like it was long. This pic-

(Deposition of Spiro Papilian.)

ture looks like his face was fat, his face was long. This picture, Defendant's Exhibit "D" looks like that man I saw because he was not very fat man. Exhibit "D" looks more like his face. This Exhibit "C" looks like the face is too fat for the man I saw. This man I saw wore glasses, he stuck them on his nose. The general color of his hair was a little brown and a little gray around here (indicating). His hair was kind of trimmed just cut with the scissors. It was just a little bit curly. Another man came with him. They came together, ate together and left together.

Cross-examination.

(Mr. LANGHORNE.)

I came to the United States in 1901. It is pretty hard for me to talk good English. I was naturalized in Hanford, Kings County, in 1911. I have run a restaurant here since 1905. During that time I have fed many thousands of people. I was in my restaurant during all the month of February, 1921. I went to Stockton during the first week of March, 1921. I left [325] here Saturday.

Q. Referring now to Defendant's Exhibit "C," had you ever—that party that you say you think was in your restaurant, had he ever been in there prior to that time, before?

A. About two or three meals he been eating there before I left.

Q. Did you understand my question? That party (referring to Defendant's Exhibit "C") had he ever been in your restaurant before this time that

(Deposition of Spiro Papilian.)

you have just testified to? A. Yes, sir.

Q. How many times?

A. Oh, two or three times.

Q. Was it on the same day? A. Oh, no.

Q. Well, how long before?

A. I don't remember, you see, the time he come.
I can't tell very well.

Redirect Examination.

(Mr. KEENAN.)

I can't tell exactly how many people I fed in my restaurant. I don't remember when he ate the other two meals. I don't know whether he ate three meals on the same day or whether he ate two meals but I am quite certain that I saw him eat the meals and on three different occasions. Defendant's Exhibit "E" is a picture of my place, it shows a picture of the Brunswick Barber Shop. My place is just in front of the automobile. From the place marked "X" on this picture to the rear of the automobile is about forty-five feet.

Deposition of Benjamin Vienna, for Defendants.

Thereupon, the defendants called as a witness in their behalf BENJAMIN VIENNA, who, being duly sworn testified as follows by deposition taken at Hanford, California, on stipulation of all parties to the action, at the taking of which deposition [326] plaintiff was represented by Maurice A. Langhorne, Esq., and the defendants by S. A. Keenan, Esq.:

(Deposition of Benjamin Vienna.)

My name is Benjamin Vienna; am twenty-five years old, am a barber, have lived here three years and have been working all the time as a barber. I have been working in the Brunswick Barber Shop practically two years. I was there last March, I was there the 23d and 24th. There are four chairs in the shop, three workmen and the boss. Four men were working there last March. The picture marked Defendant's Exhibit "C" appears to be a picture of a customer who came into my shop the 23d or 24th of March last. I served him, cut his hair. His hair was kind of crimp, it was pretty long. He gave his instructions as to how it was to be cut. He told me to put the clippers in the marked lines—not to use the clippers around the ears, to trim with the shears, but to leave it medium. When I finished his hair was cut practically the same as presented in the picture only a little closer. His hair was brown and also some gray around the edges, I mean around the ears. I judge he was forty or past, about six feet tall, he stood quite erect. I know George Elwood, he is a traveling salesman for barber supplies. I recall he was in the shop the same day. I recall Elwood was in the shop when he went out to greet a friend. I will state what happened then: "They were standing there discussing about selling me a strap. I told him I didn't want one, and he was just going to leave, and was standing at the door, he was looking down the street toward the restaurant, and about that time, he said, 'Just a minute, there is a friend of mine,' and he

(Deposition of Benjamin Vienna.)

rushed out the door, and when he went out the door I followed up, and looked down the street to see what was going on, a little inquisitive, and he come back, and I seen a man get into the machine, I walked back in the shop, and he come in, and he said, 'I guess he don't want to recognize me—.' " And when he returned into the shop he said, "An old [327] friend of mine, he don't want to recognize me. I used to shave him, he is an old friend of mine." He seemed to be worked up over the fact that the man did not recognize him, did not want to recognize him. I went to the door and recognized the man as the party I had served in my shop. He wore nose glasses, ones that just fasten on the nose, they were not suspended with a string. Defendant's Exhibit "F" is a picture of the barber-shop, it is just back of the shoe black stand. At that time, Elwood was standing in the shop at the window just as appears in the picture. As you look at this picture the man who I served and who Elwood greeted would be to the left. Defendant's Exhibit "E" is a picture showing the Olympia Cafe and my shop. The Olympia Cafe is to the left, as I look at the picture. I see the picture of the automobile The automobile I saw on that day was standing just about as shown in this picture, I saw this man as he was getting into the machine. Defendant's Exhibit "G" is a picture showing the Olympia Cafe. The man shown in this picture with a light suit on is standing just about the place where I saw the man I served in my shop standing

(Deposition of Benjamin Vienna.)

just before he got into the machine. The car did not remain after he got into it. It started right off and lost no time. Defendant's Exhibit "H" is a fair picture of the street that runs in front of the shop and the Olympia Cafe.

Cross-examination.

Mr. LANGHORNE.—I was born in Los Angeles, California, have lived here all my life with the exception of the time I was in the navy. Hanford is a town of about six thousand people, situated on the line of the Southern Pacific and on the main line [328] of the Santa Fe Railway Company. I have not seen many visitors here. It is practically off the main line of the Santa Fe, that is most traveled in this time. The population of Kings County is twenty-two thousand. I will not say the exact day when Elwood was in the shop. All I know it was around March—some time in March. I know it was the beginning of the baseball season and I know it was in March. I saw this picture some time in September, Mr. Wilton showed it to me. Mr. Wilton did not suggest to me that I saw the original of that photograph, nobody made that suggestion to me. They just brought the photograph in the shop and let the boys look at it. "I looked at it, and said, I seen that fellow here before, that is all I said, that I seen that man." I swear on my oath, as a man, that the person shown by the photograph marked Defendant's Exhibit "C" is the identical person whose hair I cut in March,

(Deposition of Benjamin Vienna.)

without any question of doubt. I had a little reason for paying particular attention to this man, he was particular about his hair, particular about the way he wanted it cut. I recall a man by the name of Smith, a Notary, coming to me sometime ago with an affidavit about my testimony. I suggested I ought to get something, but when I found out that it was unjustified by making such a suggestion I dropped it. I have been paid nothing for my testimony in this case. I have been promised nothing.

Redirect Examination.

Mr. KEENAN.—I never received a request from you (Mr. Keenan) or an affidavit for me to be signed by me. I never received a communication from the Prudential Insurance Company or any other Insurance Company to sign an affidavit in this case. I never talked with you (Mr. Keenan) about this case before to-day, for a half hour. [329]

Deposition of J. A. Moore, for Defendants.

Thereupon, the defendants called as a witness in their behalf J. A. MOORE, who, being duly sworn testified as follows, by deposition taken at Hanford, California, on stipulation of all parties to the action, at the taking of which deposition plaintiff was represented by Maurice A. Langhorne, Esq., and the defendants by S. A. Keenan, Esq.:

George Elwood stopped at my hotel between the sixteenth and the twenty-fourth of March. Photograph copy of the hotel register is marked De-

(Deposition of J. A. Moore.)

defendant's Exhibit "I." The originals of the hotel registers are offered and received in evidence without objection marked Exhibit "J" showing the signature of George Elwood. I am not positive but I think he stopped two nights.

Deposition of George Hedges, for Defendants.

Thereupon, the defendants called as a witness in their behalf GEORGE HEDGES, who, being duly sworn testified as follows, by deposition taken at Hanford, California, on stipulation of all parties to the action, at the taking of which deposition plaintiff was represented by Maurice A. Langhorne, Esq., and the defendants by S. A. Keenan, Esq.:

I know George Elwood, I met him last March and did business with him the twenty-first day of March. I bought a pair of clippers from him. Defendant's Exhibit "K" is the check I gave Mr. Elwood when I bought the clippers. This check was delivered by me to Elwood here in the city personally.

Deposition of William Paul Koeper, for Defendants.

Thereupon, the defendants called as a witness in their behalf WILLIAM PAUL KOEPER, who, being duly sworn testified as follows, by deposition taken at Hanford, California, on stipulation of all parties to the action, at the taking of which deposition plaintiff was represented by Maurice A. Langhorne, Esq., and the defendants by S. A. Keenan, Esq.: [330]

(Deposition of William Paul Koeper.)

I am twenty-nine years old, am a barber, have lived in Hanford since October, 1920. I have been working in the Brunswick Barber Shop since that time, I worked there last March. I remember George Elwood. I was in the shop when Elwood was standing at the window, and he said, "There goes an old friend of mine from Washington." As soon as he said that, Elwood stepped outside the door and tried to call his attention, and he was gone. When he returned into the shop he said, "The gentleman will not recognize me," that was some time in the afternoon, I don't know the exact hour, I did not see the man he was attempting to greet.

Cross-examination.

Mr. LANGHORNE.—I bought a strap and a pair of clippers from Elwood. It was the twentieth of March. I got a guarantee slip with the clippers, I put it down March, 1921, the date of the guarantee of the pair of clippers.

Deposition of Orvalle Onorato, for Defendants.

Thereupon, the defendants called as a witness in their behalf ORVALLE ONORATO, who, being duly sworn testified as follows; by deposition taken at San Diego, California, on stipulation of all parties to the action, at the taking of which deposition plaintiff was represented by Maurice A. Langhorne, Esq., and the defendants by S. A. Keenan, Esq.:

My name is Orvalle William Onorato; my age is

(Deposition of Orvalle Onorato.)

twenty-two years. I was born in Kelso, Washington. I am in the United States Army, Air Service, enlisted July 7, 1919, at Vancouver Barracks, Vancouver, Washington. I lived in Kelso all my life except four years that I was overseas and three years in the army. My home has been there all my life. I spent four years overseas with my folks, not in the service. I was in Europe from [331] 1907 to 1911. I was born in 1900. From 1911, I lived in Kelso all my life excepting when I have been in the service. Since my enlistment I have been back to Kelso once. I knew the banker, Fred Stewart at Kelso. I transacted business with him for my father. Once or twice, I believe I made a deposit in the bank for my father. I was present with my father on two occasions when he talked with Stewart in the street or elsewhere. I have talked with Mr. Stewart. He knew me all the time I lived in Kelso. I lived a mile from the main part of town. Our farm was just a few rods from the town. I saw Mr. Stewart last April in the city of Pasadena about the 26th of April, just before noon. It was a clear day. We were driving along the street, on the right-hand side of the street, and my attention was drawn to a man from the peculiar swing of the arms and walk, and getting near I recognized it to be Frederick L. Stewart. I took a good look at him from the front, passing to the side and then looking back. I saw his face, I saw him walk away, when I first saw him I was approaching him. A man

(Deposition of Orvalle Onorato.)

was walking with Stewart, he was shorter than Stewart. I happened to be in Pasadena that day because we were driving to Los Angeles, to the motorcycle races on the 26th and with some boy friends. We started from San Bernardino. I was stationed at that time at March Field, located about ten miles east of Riverside. The machine belonged to Hall brothers, the boys who were with me. The Hall boys were about twenty years old. We started about nine o'clock that morning and returned that night. I am looking at Defendant's San Diego Exhibit 1, offered and received in evidence without objection, it is a photograph of Fred Stewart, the picture does not represent him as he looked when I lived in Kelso. He looked older when I lived in Kelso than this picture shows and when I saw him in Pasadena he looked older than this picture shows. [332]

Cross-examination.

(Mr. LANGHORNE.)

We drove from San Bernardino to Pasadena on April 26th, 1921. We left San Bernardino about nine in the morning and passed through Pasadena about noon or a little before on that date. It is not so far between the two places. We did not stop on the way. We were driving between twenty and twenty-five miles per hour between San Bernardino and Pasadena.

I believe I was in San Bernardino on the night of April 25th. I don't remember, at what hotel

(Deposition of Orvalle Onorato.)

I stopped. I did not stay with the parties that owned the automobile in which we rode from San Bernardino to Pasadena on April 26th. I don't remember how much I paid for my room on the night of April 25th. The automobile that we were in on April 26th is owned by the Hall brothers. I do not know the first name of either one of these boys. I met them in San Bernardino. Prior to leaving March Field and going to San Bernardino I had no engagement to go with the Hall boys to the place I have mentioned. I believe I met the Hall boys on the afternoon of April 25, 1921. I met them on the street in San Bernardino. I just happened to meet them. They took me home with them. I have forgotten where they live in San Bernardino. It is near Third Street. I only remained there a few minutes on the afternoon of April 25, 1921. I don't know where I went after I left their place. I don't remember the kind of a hotel that I stayed in on the night of April 25th. I don't remember what part of town the hotel was situated in. I can't say how many times I have been in San Bernardino prior to April 25, 1921. I had made frequent trips there.

When we got to Pasadena we went straight through. [333]

I have been mistaken before about the identity of persons. The possibility that I was mistaken about Mr. Stewart is very scarce.

Q. How far away from this party were you when you first caught sight of him?

(Deposition of Orvalle Onorato.)

A. About one hundred or one hundred twenty feet.

Q. How fast was your machine going?

A. Slow.

Q. What street was it on? A. I don't know.

Q. Have you ever been back there since?

A. No, sir.

Q. Did you speak to him? A. No, sir.

Q. Did you holler at him? A. No, sir.

Q. Did you wave at him? A. No, sir.

Q. Why didn't you?

A. Well, before I had made positively sure it was he we had passed him.

Q. Let us see now, if I understand you correctly. Before you were positive that it was Fred Stewart you had passed him. Have I quoted you correctly.

A. Before I was positive that it was Stewart I had come by the side and seen a rear view of him.

I went back to Kelso subsequent to April 26, 1921. I arrived there on May 23, 1921 and remained thirty-six days. While there I talked to J. S. Robb and an attorney named McKenney about seeing Stewart on the streets of Pasadena.
[334]

Q. Did you not tell Mr. Robb during the course of that conversation that I directed your attention to that you could not positively swear that the man you saw there in Riverside or Pasadena, whichever place it was, was Stewart?

A. I said I would not.

Q. You told Mr. Robb that? A. I believe.

(Deposition of Orvalle Onorato.)

Q. You told Mr. Robb then that you would not swear positively that the man you saw in the streets of Pasadena was in fact Fred Stewart?

A. I told him I was satisfied and positive it was, though I would not take an oath on it.

Q. And will not take an oath on it now then?

A. I cannot swear that it was positively he because I have no way to prove it was, but I am positive. I saw—

I saw Mrs. Stewart in Elsinore after I returned from Kelso to March Field. I returned from Kelso about the first of July. I saw her on the streets.

Redirect Examination.

Mr. KEENAN.—There were no pedestrians on the street near Stewart when I saw him, there were, further behind him but none with him and the other man when I saw him. There were no automobiles in the street nothing to obstruct my view. “If my brother had been walking on the sidewalk where I saw Stewart walk that day and I saw him just as I saw Stewart and under the same circumstances, I would not have recognized my brother any quicker than I recognized Stewart. I do not recall any conversation in Kelso about Stewart that I started myself. About every time I met [335] a friend he started to talk to me about Stewart, while I was in Kelso. I cut them, as short as I could to get rid of them. I saw Mrs. Stewart in Elsinore. What I mean is, if I saw my brother as I saw Stewart, “I would have posi-

(Deposition of Orvalle Onorato.)

tive it was him," but still by talking to him would be proof. I understand by these questions that Mr. Langhorne wanted me to be absolutely positive and be able to prove that that was Stewart. Now, if I do not have to prove anything at all but just testify myself I testify that was Fred Stewart I saw in Pasadena. I have no hesitancy whatever in testifying that that was Fred Stewart I saw at that time and place.

Cross-examination.

When I talked with Judge McKenney when I was in Kelso I think he told me that he was the administrator of Stewart's estate. I wouldn't go to his office to sign any affidavit. I did not want to be bothered. I was on a furlough there and have a good time. I came here to give my deposition because I was asked to.

Deposition of Arthur E. Pooley, for Defendants.

Thereupon, the defendants called as a witness in their behalf ARTHUR E. POOLEY, who, being duly sworn testified as follows, by deposition taken at San Francisco, California, on stipulation of all parties to the action, at the taking of which deposition plaintiff was represented by Maurice A. Langhorne, Esq., and the defendants by S. A. Keenan, Esq.

My name is Arthur E. Pooley, my vocation is a Purser and super-cargo on the steamer "Mazatlan." That steamer carries both freight and passengers from San Francisco to Mexico ports and

(Deposition of Arthur E. Pooley.)

return. I recall a trip where we left San Francisco about April 1, we got to San Pedro three days later. The first Mexican port was Ensenada. My business on that trip was looking after the freight and the general business of the ship passengers, etc., in fact all the bookkeeping and that work was done by the purser and super-cargo. I had charge of all the bookkeeping, came in contact with the passengers every day. Defendant's [336] Exhibit "A" is marked subsequently offered and received in evidence without objection. Defendant's Exhibit "A" absolutely resembles a person we carried on that voyage. I think he was in the forties. He was not as fleshy as that picture represents. This picture is a trifle younger than the man I refer to. Defendant's Exhibit "B" is offered and subsequently received in evidence without objection. Defendant's Exhibit "B" is more like the actual look than the other photograph, his face is thinner and he had wrinkles when he pulled back. His hair was brown as mine or light hair, it was a mixture of color, a mixture of brown with a little gray in it. You might call it sandy but not red, a mixture of brown. It was wavy. He had it cut the same style it looked to as Exhibit "A" and "B." He had a long slim nose his face was narrowed up to his chin, he was nearly six feet tall weighed about 160 pounds. He was a thin man. He stood erect with a habit of throwing his shoulders back in that kind of way (indicating movement) his walk was erect

(Deposition of Arthur E. Pooley.)

and sedate you might say. This man got aboard I think at San Pedro or Ensenada. I talked with him during the voyage, I had a conversation with him every morning, he called up my room every once in a while. He talked about Mexico, he asked me about what business chances were at Guadalajara. He did not talk to me about his private affairs to my knowledge, he made a confident of no one on the boat. I had occasion to see him every day and did see him every day. He ate at the same table with me he talked with me there. He sat opposite me at the table. He talked with others some but seemed to talk with me most. The purser had charge of the valuables of the passengers. I received two packages from this man. They were about ten inches or so long and about two or three inches thick, and three or four inches wide. They were wrapped in brown paper and tied up with sealing wax on the knot. He took these packages up just before we got to Manzanillo. [337] Manzanillo is one of the principal towns, is a railroad town, can go by rail from there to Mexico City, via Guadalajara and Colima, and people can go from there into the United States by rail. Ensenada, is the first stop we make after reaching the United States is about thirty-seven miles from San Diego. The means of transportation from there to San Diego is by automobile.

Cross-examination.

Mr. LANGHORNE.—I am fifty-five years old, was born in Brooklyn, New York. I have lived

(Deposition of Arthur E. Pooley.)

in California since the earthquake and fire, about sixteen years. I have been in the steam boat business all the time as freight clerk, purser and supercargo. I lived in Winchester Annex Hotel. I have lived there off and on for four or five years. There were two other American passengers, I cannot give the description of them. It took us six days to go from San Pedro to La Paz. I did not notice about this man's teeth, I did not notice anything peculiar about his teeth. This case is of no interest to me. Witness is shown Plaintiff's Exhibit 1, for identification and it is recognized by the witness as the picture of the man he saw on the boat. This party got off at Manzanillo. I should think Manzanillo is over one thousand miles from San Pedro. It took us seventeen days to make the trip. This man had on a palm beach suit, you know one of those light suits, not white. I have been around the work five or six times, many many years.

Redirect Examination.

Mr. KEENAN.—If Mr. Langhorne had furnished me a photograph of the American passengers on that trip I think I probably would recognize them after consideration. The other passengers did not talk as much with me as this man. [338]

Deposition of K. Hansen, for Defendants.

Thereupon, the defendants called as a witness in their behalf K. HANSEN, who, being duly sworn testified as follows by deposition taken at San

(Deposition of K. Hansen.)

Francisco, California, on stipulation of all parties to the action, at the taking of which deposition plaintiff was represented by Maurice A. Langhorne, Esq., and the defendants by S. A. Keenan, Esq.:

I was first officer on the "boat Mazatlan," I remember the voyage when we left San Francisco last April or May. I was first officer on the boat, my age is forty-one years, we carried passengers on that trip. Witness is shown Defendant's Exhibit "A." We had a passenger on that trip which this appears to be a picture. He was about five feet ten inches or something like that. He was slim. He looks younger in this picture than he really was when I saw him. The man I saw had a narrower face than this fellow. Witness is shown Defendant's Exhibit "B." This does not look as much like him as the other, I suppose I met him more face to face. His hair was wavy, it was something like mine, brown, it was light brown. I think this man got on the boat at Ensenada. It was the beginning of the journey. He got off at Manzanillo. This man ate at the table with me. I did not see him much aside from seeing him at the table.

Cross-examination.

Mr. LANGHORNE.—I was born in Norway, April 26, 1880, came to this country in 1900, was naturalized in Oakland in 1907. I had been following the water since I was fourteen years old. I was on this particular ship about ten months

(Deposition of K. Hansen.)

plying between San Francisco and Mexican ports. I do not know when we left San Francisco except that it was the first part of April, I will not swear that the man who was on board ship that I have been testifying about is the man shown in this photograph. [339]

Redirect Examination.

Mr. KEENAN.—I would not say that that picture is of that man, but it resembles him, the picture looks exactly like it should be him, I could not swear it is the same man, it is impossible, maybe two men look just alike.

Deposition of Captain F. C. Meyer, for Defendants.

Thereupon the defendants called as a witness in their behalf CAPTAIN F. C. MEYER, who, being duly sworn testified as follows by deposition taken at San Francisco, California, on stipulation of all parties to the action, at the taking of which deposition plaintiff was represented by Maurice A. Langhorne, Esq., and the defendants by S. A. Keenan, Esq.:

I am a sea captain, my age is thirty-five. I was captain in charge of the motorship "Mazatlan." She sailed from San Francisco the fore part of April, about I think April 5. Usually it takes from three and a half to four days to go from San Francisco to Ensenada. Witness is now shown Defendant's Exhibit "A" and states, it appears to be a likeness or a picture of a passenger on that trip. I further testify that Defendant's

(Deposition of Captain F. C. Meyer.)

Exhibit "B" appears more as the likeness of the man than Exhibit "A." The man I saw was not as young looking as this picture, Exhibit "A." His face was not filled out as much. I do not know whether his hair would be blonde or red or whatever he would call it, light anyway. His hair was not black. I should say he had long hair well combed. It was not combed as indicated in this picture, Exhibit "B," this hair appears dark. I should judge it probably was a little longer than that. I conversed with this man. I remember one occasion and maybe more during a little card game we played just before dinner bell one day he invited me to his cabin to have a drink. He did not talk much. As far as I can recall he came aboard at Ensenada, I lost track of him at La Paz. [340]

Cross-examination.

Mr. LANGHORNE.—I first saw this photograph last June, some part of June. I could not give you the exact dates without looking up my log, there should be a record in Los Angeles of the California Mexican Steamship Company in the Pacific Electric Building. Every passenger who took passage was required to register. I do not know the name of this passenger I have referred to. I can give you a description of five American passengers on that boat that I can never forget about. Sometimes I was not more than five feet away from him. I believe we had a few games of Penny Ante with this man around a small deal table. The man's appear-

(Deposition F. C. Meyer.)

ance was kind of attractive. I did not notice whether he had any front teeth missing. I would not swear positively that the photographs Exhibits "A" and "B" are the photographs of the man on my ship. I did not notice anything out of the ordinary about this man's teeth.

Redirect Examination.

Mr. KEENAN.—These photographs are likenesses of a man that was on that ship, but I will not swear that that was the man, the photograph of the man that was on the ship. "What I mean to say is this: When I saw this photograph for the first time in June, last year, I immediately saw that I had seen a man of that description somewhere and by refreshing my memory I found that man had been a passenger on the ship, a man answering this description; now, whether this man, whether the man that this photograph represents is the man, the same man or not, I do not swear to that." This man was about six feet more or less, his build was slender, he would weigh about 175 pounds.

Deposition of Walter H. Comber, for Defendants.

Thereupon, the defendants called as a witness in their behalf WALTER H. COMBER, who, being duly sworn testified as follows, by deposition taken at Riverside, California, on [341] stipulation of all parties to the action, at the taking of which deposition plaintiff was represented by Maurice A. Langhorne, Esq., and the defendants by S. A. Keenan, Esq.:

(Deposition of Walter H. Comber.)

My name is Walter H. Comber; am thirty-five years old; am married; for three years I have lived at 824 Sheridan Street, Corona, California, about fourteen miles from Riverside. I lived in Washington twenty years, in Seattle and Tacoma. When living there I knew Stewart the banker at Kelso. I met him first in 1913 or 1914, while running an automobile to Mt. Rainier I took him up there as a passenger. He sat with me on the driver's seat and talked with me on the trip to Mt. Rainier. On August, 1921, I saw him standing on the corner of Colorado and Marengo Streets in Pasadena, California. I was riding in an automobile on the street, I came within ten feet of him. As I approached his face was towards me. He had on a gray suit and a gray cap. He had on glasses at that time, dark rims, nose glasses. I saw him two or three days later on Colorado Street at the intersection of Colorado and Broadway, he came around the corner and we both met on the corner practically. I passed him facing him, almost touching one another. We did not speak, he looked at me and I looked at him. He had on a gray suit and a soft hat, it was a soft gray hat. Witness is shown Defendant's Exhibit, Riverside, No. 1, and states; that it appears to be a picture of Frederick Leroy Stewart. The witness is now shown Defendant's Exhibit, Riverside No. 2, and states, that is more of a picture of him to-day than the other. No. 1, is too full in the face for his appearance now, in that picture No. 1, the face is too full. His face

(Deposition of Walter H. Comber.)

comes in to a point at the chin. This picture, No. 2, is more the appearance of him to-day. From the automobile, the only reason I looked at him was that I knew him the minute I [342] saw him. When I met him on the sidewalk, I noticed the peculiar walk, a very erect walk. He seemed to walk as though he had some injury to his back or his leg, that makes him walk carrying his heels down first and his shoulders straight back. It is a walk out of the ordinary. He carried his head kind of back. Both photographs offered and received in evidence without objection.

Cross-examination.

I was born in Ireland. I came to this country when I was sixteen years old and I landed at Victoria, B. C. I went from there to Seattle. I remained in Seattle until 1914 when I went to Tacoma. I was in the automobile work while living in Seattle. I worked for the Seattle Taxicab Company for about two years. I also worked for the Commercial Importing Company. I also worked for the Pike Street Market. When in Seattle I lived on Queen Ann Hill. I can't give you the number of the house. It was on 8th and Wheeler. I lived there two years. I also lived at Green Lake. I can't give you the number of the house. I cannot even remember the name of the street. I also lived in the Volney Hotel while in Seattle. While in Tacoma I lived on South "J" Street with a man by the name of George Bennett. I lived there three months. I cannot give you the number of the house.

(Deposition of Walter H. Comber.)

I went back from Tacoma to Seattle in the spring of 1914. I remained in Seattle until 1918. After I went back to Seattle from Tacoma I was driving my own car. When I left Seattle I went to California and located in Venice. I lived there two or three days and then went to Pasadena where I lived for six or eight months. I next located at Riverside and lived there from September 9th [343] until January 17, 1922. I am now living at Corona.

The first time I saw Fred Stewart was on the stage run, when I was running an automobile from Seattle to Rainier National Park. This was some time in 1914 between June and the latter part of September. At that time there was a woman with him. I know it was Fred Stewart because he registered and he also told me his name. I met him several times thereafter in Seattle. I couldn't say how long it was after I drove him up to Rainier National Park until I next met him.

Q. You started to say something about seeing a photograph a while ago. Can you tell me when you first saw that photograph that was marked Riverside Exhibit 1?

A. When I first saw this photograph?

Q. Yes.

A. That is the picture that I first saw in Mr. Wilton's hand.

Q. Do you know Mr. Wilton? A. No.

Q. Where were you when he showed you that photograph.

(Deposition of Walter H. Comber.)

A. Mr. Wilton did not show me the photograph.

Q. I thought you said you saw it in his hand.

A. I did but he was not showing it to me.

Q. Who was he showing it to?

A. He was showing it to another man. Who he was I don't know.

Q. Where? A. Riverside.

Q. And you came along?

A. It was right at my office in Riverside.

Q. And you immediately spoke up did you?

A. I did. [344]

Q. You said you had seen that man?

A. I said I knew that man.

Q. When was this that Mr. Wilton was at your place of business at Riverside with the photograph.

A. I think it was October of last year.

Q. What did you say to Mr. Wilton?

A. Mr. Wilton came to my place to hire a car.

Q. Who is Mr. Wilton?

A. That is the man sitting there.

Q. What connection has he with the Prudential Life Insurance Company?

A. I think that he is an inspector, if I am not mistaken. I have found it out since.

Q. Go ahead and tell what took place.

A. Mr. Wilton came to my place to hire a car to go to March Field and I rented him a car. He drove to March Field and when he came back I was standing in the doorway and he brought this man in with him from March Field that he went out for and they were in conversation and Mr. Wilton

(Deposition of Walter H. Comber.)

took the picture out of his pocket and I turned around and says, "I know that man."

I should judge it was around the latter part of August of last year (1921) when I saw Mr. Stewart on the street in Pasadena. He was not disguised. He looked natural. I didn't speak to him. The first time I was in the car but when he came up again and passed me I had gotten by him before I thought of speaking to him. He looked at me and I looked at him. It would have been the natural thing to have spoken to him. We were friendly. There was no reason why I should not have spoken to him. [345]

Testimony of Charles B. Dill, for Defendants.

Thereupon the defendants called as a witness in their behalf CHARLES B. DILL, who, being duly sworn testified as follows:

My name is Charles B. Dill; I am forty years old. I reside in Kelso; have lived there fourteen months. I came to Kelso the 8th of February and Stewart disappeared the 17th of March. I knew Mr. Stewart five years before I came to Kelso. Witness is now shown Defendant's Exhibit "C," annexed to the Hanford depositions, also Exhibit "D," annexed to the same depositions. Witness states that the same are pictures of Mr. Stewart, Exhibit "D" is the better picture. I think Exhibit "D" is a more recent picture of Stewart than Exhibit "C," Exhibit "D" represents Stewart about the time he disappeared, it looks just as he

(Testimony of Charles B. Dill.)

looked about the time he left. After I went to Kelso I saw him every day practically two or three times a day. Before I went to Kelso I probably saw him something like once a month.

Cross-examination.

Mr. LANGHORNE.—If I had never seen Stewart in my life I would say that these two pictures were made of the same man. I would say that Exhibit “D” is a good picture of Stewart as I saw him in March of last year. His hair as shown in this picture looks about as it did when he went away, the style of it.

Testimony of Thomas McDermott, for Defendants.

Thereupon, the defendants called as a witness in their behalf THOMAS McDERMOTT, who, being duly sworn, testified as follows:

My name is Thomas McDermott, I am seventy-one years old. I [346] have lived in Kelso thirty-two years. I knew Stewart all the time I lived in Kelso, I was intimate with him in a business way. I would see him daily when I was in town. When I would meet him in the street, I would always speak. I saw him just a day or two before he disappeared. I used to be in business in Kelso. I think I would be able to recognize a picture of him. Witness is shown Defendant’s Exhibit “C,” annexed to the Hanford depositions and he states, that this is a picture of Stewart. Witness is shown Defendant’s Exhibit “D,” annexed to the Hanford depositions and states, that is also a picture of

(Testimony of Thomas McDermott.)

Mr. Stewart. They both look like him. I know I would recognize either of them as a picture of him. The photographs annexed to the Hanford depositions were received and offered in evidence without objection. Defendant's Exhibits "C," "D," "E," "F," "H" and "I," were offered and received in evidence without objection. Defendant's Exhibit "G" is also offered and received in evidence without objection. [347]

Testimony of George Herbert Raleigh, for Defendants.

Thereupon, the defendants called as a witness in their behalf GEORGE HERBERT RALEIGH, who being duly sworn testified as follows:

My name is George Herbert Raleigh; I am forty-six years of age. I am a banker and manager of the Bank of California at Tacoma. I have lived in Tacoma thirty-one years. I came here in response to a subpoena. I knew Frederick L. Stewart when he lived in Kelso. I knew him ten years. Would see him once or twice a year. I saw him within a year prior to March 1921. I believe I would be able to recognize a picture of him. There was nothing peculiar about his mouth or his teeth that I recall to attract attention. Witness is now shown Defendant's Exhibit "Q" annexed to the San Francisco depositions. It was offered and received in evidence without objection. I would say Exhibit "Q" is a photograph of Stewart, when he left he was a little older than this picture shows.

(Testimony of George Herbert Raleigh.)

Witness is now shown the other photograph annexed to the California depositions, in a smaller figure and he states, this is more like I remember him, that is more nearly like I remember him. This photograph is designated Exhibit "R" offered and received in evidence without objection.

Testimony of Harry E. Moores, for Defendants.

Thereupon, the defendants called as a witness on their behalf HARRY E. MOORES, who, being duly sworn testified as follows:

I have lived in Seattle; I am fifty-three years old. I am connected with the Consolidated Railroad ticket office at Seattle. My duties are to look after the traveling public and give them information on trips to any points in the United States and steamship trips and so on. I have been in this business thirty-five years. I had charge of the same department at Seattle during the war. I am the final authority on all information concerning routes and time and trips in my office. At your request I have looked up the train schedules of all trains running between [348] Manzanillo and lower California and Los Angeles, for the months of March and April, 1921. There is railroad communication between Manzanillo, Mexico and El Paso and Los Angeles. If a passenger had left Manzanillo on April 20, 1921, he would have reached Los Angeles in four days and sixteen hours. I have the official guide with me that is used by every railroad and every ticket man in the country.

(Testimony of S. A. Keenan.)

Cross-examination.

Mr. LANGHORNE.—From Manzanillo to El Paso is between fifteen to sixteen hundred miles. They are making this run now in four days easily.

Testimony of S. A. Keenan, for Defendants.

Thereupon, defendants called as a witness in their behalf S. A. KEENAN, who, being duly sworn, testified as follows:

I am the attorney for the Prudential Life Insurance Company in this case. I have been practicing law in Seattle for fifteen years. Defendant's Exhibit "X," is a photographic copy of a part of the record of the California Mexico Steamship Company shown to witness. At the time Mr. Langhorne and I were in California taking these depositions which have been introduced in evidence here, we called at the office of the California Mexico Steamship Company in Los Angeles and saw the record of the steamer "Mazatlan." I examined it and made notes from it. I had that photograph taken, I ordered that after I left there.

Q. "Showing you this photographic copy which purports to be a photographic copy of the voyage of the steamer "Mazatlan" together with the time of arrival and departure of the boat at the various places on a trip in April, what can you say as to whether or not that photograph is a true and accurate statement of what that log-book itself shows and if that is [349] a true and accurate copy of the book?

A. It is of the part so far as it concerns this

(Testimony of S. A. Keenan.)

vessel, because that is the only part I examined at the time."

Photograph offered in evidence.

Mr. LANGHORNE.—I object to it as not properly identified. The man that took the photographic copy is not here to identify it.

The COURT.—You carefully examined it, the log, yourself, before you had the photograph taken?

The WITNESS.—Yes, your Honor, and Mr. McMillan, the manager of the steamship company, had his assistant go and get these records, and the very first question that Mr. Langhorne asked was when that boat left San Francisco and we got that information, and then he asked when it got to San Pedro and he gave the same dates that are given there, and then Mr. McMillan turned the whole thing over to us and said "Make all the notes you want from the record."

The COURT.—From the notes you made when you examined the log you check up on this photograph?

The WITNESS.—Yes, your Honor.

The COURT.—Objection overruled. It will be admitted. Photograph referred to admitted in evidence and marked Defendant's Exhibit "X."

Cross-examination.

(Mr. LANGHORNE.)

Q. Why didn't you take the deposition of the man? A. At the time we were down there?

Q. Yes, sir.

A. Mr. Langhorne, you know as well as I do we

(Testimony of S. A. Keenan.)

didn't know whether we could get these records or not. [350]

Q. You found it, didn't you?

A. We found it, yes.

Q. Do you mean to tell the Court that I ever saw that record?

A. I don't even intimate you saw that record at the time.

Q. When we went down to California we had an open stipulation to take the deposition of anyone you wanted to take?

A. At your solicitation, yes.

Q. I told you you could take the deposition of anybody you wanted to take without notice?

A. Yes. You asked me, Do I want to testify that you ever saw that record?

Q. Yes.

A. I say you saw that record as well as any other record, because it was there on the table with all the other records.

Q. We asked for the passenger list, didn't we, when we went in the office? A. Yes.

Q. You couldn't find the passenger list?

A. That is true.

Q. And he had a copy of the passenger list there and you took a copy of it and I took a copy of it; isn't that true?

A. I didn't take a copy of all the passenger list. I took a copy of the American passengers. I guess that is all you did.

(Testimony of S. A. Keenan.)

Q. I took a copy of all of them. We looked over the steamship tickets— A. Yes.

Q. — to see if we could find any handwriting that resembled the handwriting you wanted to find?

A. That is what I was looking for and I guess you were looking for, too. [351]

Q. I never saw that log-book or never heard of it.

A. I can't help it. I have got it in my notes.

Q. Do you claim I saw it while I was there?

A. I don't know whether you did or not. You could see that as well as you could see the tickets if you wanted to see it.

Q. You don't mean to tell the Court that I saw that log-book there?

A. I don't mean to say you saw the tickets. I don't mean to say you saw the passenger list. The fact is I was not watching all the things you did.

Redirect Examination.

Mr. RUPP.—These are the records that were out on the table. We wished to see when the boat arrived at Manzanillo and when it left San Francisco. In other words this man went to Manzanillo got off and tracked back to the United States. He got to Manzanillo April 20. It shows even the hour of the arrival. He left San Francisco on the first and got there on the twentieth of April.

Mr. RUPP.—It shows it got in at 6:45 A. M. April 20, and left at one P. M. April 20, and it has a time here for all these other ports named at the

(Testimony of S. A. Keenan.)

top showing the date and the time of arrival and the time of sailing.

The captain did not have any records before him when he testified to the 24th. His testimony is clear that the records were all with the steamship company in Los Angeles. He had to guess at the date.

Mr. KEENAN.—If the Court please, that is our case entirely, with the exception of two witnesses that we expect to have here to testify as to the accuracy of those photographs [352] of Mr. Stewart, and I imagine it would be a little cumulative just now, and if they dispute that we would like the privilege of putting on two more witnesses sometime before the case is closed in regard to these being good photographs of Stewart at the time he left.

The COURT.—Well, I don't understand just what you are asking to reserve. That is the testimony of the photographer or—

Mr. KEENAN.—No; we will want to call two more persons to identify those photographs as being likenesses of Stewart at the time he left.”

(Defendants rest.)

REBUTTAL TESTIMONY.

Testimony of Everett Smith, for Plaintiff (In Rebuttal).

EVERETT SMITH, being first duly sworn, testified on behalf of plaintiff as follows:

My name is Everett Smith. I am one of the

(Testimony of Everett Smith.)

Judges of the Superior Court of King County, Washington. I have known Walter H. Comber since the 6th day of May, 1906. I was in court on the morning of that day and he was arraigned before one of the Judges, charged with burglary, to which he pled guilty. He was then between sixteen and seventeen years old. The Judge before whom he was sentenced did not know what to do with him and made the remark that if anyone there was willing to take the boy, take charge of him, he would not send him to a penal institution. I volunteered to take charge of him and did so and he has been on my hands more or less ever since. I was intimately acquainted with him. I suppose I did more for him than anybody else outside of his own family. I am acquainted with his general reputation for truth and veracity in the city of Seattle. It is bad. [353]

Cross-examination.

(Mr. KEENAN.)

There were some circumstances which mitigated the appearance of the case very much. The boy had been discharged by his employer and was out of money and out of work and he went back to the store and said he was going to get what was due him, and he either took money or merchandise to the limit of the amount which he claimed was due him from his employer. That fact in itself has not influenced me. I have known him intimately since that time for sixteen years and have done a great deal for him. His veracity is incredible.

(Testimony of Edwin C. Ewing.)

Mr. LANGHORNE.—I now offer in evidence an exemplified copy of an information and judgment in cause No. 3647 entitled State of Washington vs. Harry Comber, wherein the Superior Court of King County sentenced him to three years in the State Penitentiary for burglary.

Document referred to admitted in evidence and marked plaintiff's Exhibit 32.

Testimony of Edwin C. Ewing, for Plaintiff (In Rebuttal).

EDWIN C. EWING, called as a witness in rebuttal for plaintiff, being duly sworn, testified as follows:

(Mr. LANGHORNE.)

My name is Edwin C. Ewing. I live in Seattle. I am Assistant Corporation Counsel of that city. I have lived there for twenty years. I am acquainted with Walter Comber who formerly worked in Pike Street Meat Market. I am acquainted with his general reputation for truth and veracity. It is bad.

Testimony of C. F. Riddell, for Plaintiff (In Rebuttal).

C. F. RIDDELL, called as a witness in rebuttal for [354] plaintiff, being sworn, testified as follows:

(Mr. LANGHORNE.)

My name is C. F. Riddell. I live in Seattle. I have been Assistant United States Attorney and United States Attorney. I am acquainted with

(Testimony of C. F. Riddell.)

Walter Comber. I first knew him in 1913. I am acquainted with his general reputation for truth and veracity in the city of Seattle. It is bad.

Cross-examination.

(Mr. KEENAN.)

Mr. Ewing and myself were interested in a lawsuit in which Comber was incidentally connected. My acquaintance with him began before the lawsuit began. I knew of him off and on until the time he left for California.

Testimony of F. W. Taggart, for Plaintiff (In Rebuttal).

F. W. TAGGART, called as a witness in rebuttal for plaintiff, being first duly sworn, testified as follows:

(Mr. LANGHORNE.)

My name is F. W. Taggart. I reside in Seattle. I have lived there for twenty years. I was connected with the Seattle Taxicab Company for about four years. I knew Walter Comber both while I was manager of that company and prior thereto as well. He was at one time in the employ of the Seattle Taxicab Company. I am acquainted with his general reputation in the city of Seattle for truth and veracity. It is worthless.

Cross-examination.

Mr. KEENAN.—You and he had trouble, I expect.

A. No, sir. Not any more trouble than you have

(Testimony of F. W. Taggart.)

with any one that you was trying to do something for and he wouldn't [355] let you.

Q. His services were perfectly satisfactory, were they? A. Very unsatisfactory, sir.

Testimony of Harry H. Cline, for Plaintiff (In Rebuttal).

HARRY H. CLINE, called as a witness in rebuttal for plaintiff, being sworn, testified as follows:

(Mr. LANGHORNE.)

My name is Harry H. Cline. I live at 4808 North Mullen Street, Tacoma. I have lived in Tacoma since January 1, 1917. I am an engineer by profession. I have been acquainted with Walter Comber since 1911, I think. I am acquainted with his general reputation for truth and veracity in Tacoma. It is bad.

Cross-examination.

(Mr. RUPP.)

I don't know just how long Comber did live in Tacoma. I guess three or four months. I am not sure. I have lived here since January 1, 1917. I lived in Seattle prior to that time.

Testimony of L. O. Barnard, for Plaintiff (In Rebuttal).

L. O. BARNARD, called as a witness in rebuttal for plaintiff, being sworn, testified as follows:

(Mr. LANGHORNE.)

My name is L. O. Barnard. I have lived in Seattle for about seven years. Before moving to Seattle

(Testimony of L. O. Barnard.)

I lived in Kelso for thirteen years. I am a dentist by profession. I was acquainted with Fred L. Stewart when I lived in Kelso. I did dental work for him at that place. His upper teeth were all gold crowns, that is, with the exception of bridge-work, [356] with the exception of three anterior teeth, two centrals and a lateral. The laterals—the left lateral had a white crown on. The two centrals were his natural teeth. The balance of them were gold crowns. The bicuspid and the front teeth were exceptionally long. Mr. Stewart had a medium sized mouth but his lips were very thin. When he was talking or laughing or even in an ordinary conversation the first thing you would notice about him would be his teeth.

Q. Do you suppose, Doctor, from your knowledge of Fred Stewart's teeth and his mouth and the peculiarities that you have described that a person could be with him for seventeen days, sit at the same table and eat with him, drink with him and play poker with him around a small deal table, and not notice those teeth? A. Absolutely not.

Cross-examination.

(Mr. KEENAN.)

The last work I did for him was six or eight years ago. I have seen him probably three or four times since. His two central teeth were natural. The other teeth had gold crowns on. There was more gold in his teeth than you ordinarily find in men who have poor teeth.

(Testimony of L. O. Barnard.)

The photograph you show me looks like Stewart the last time I saw him. Exhibit "C" is a picture of Stewart. It resembles him as far the photograph goes. I should judge Exhibit "D" is also a photograph of Stewart. I would consider it a very good photograph.

Redirect Examination.

(Mr. LANGHORNE.)

I think it was about three years ago that I last [357] saw Stewart. I saw him in a drug-store at Kelso. He had his hat on.

**Testimony of George M. Campbell, for Plaintiff
(In Rebuttal).**

GEORGE M. CAMPBELL, called as a witness in rebuttal for plaintiff, being sworn, testified as follows:

(Mr LANGHORNE.)

My name is George M. Campbell. I live at Kalama. I am cashier of the Kalama State Bank. I am acquainted with Captain John Reid. On the night of March 17th last I was at Dr. Sims' residence. About nine o'clock that night sheriff Hogett who was there received a telephone call from Captain Reid and Sheriff Hogett and myself immediately left Dr. Sims' residence. I went down to the dock where the boats land. The light at the top of the slip was burning. I was in the barber-shop of Mr. Taylor in Kalama on May 5th or 6th of 1921. It was about the 5th I guess. I saw George Elwood there that day. He is in the court-

(Testimony of George M. Campbell.)

room now. While in there Elwood stated that he was in Hanford, California, on February 22, 1921. He said he knew it was February 22d because it was Washington's birthday. He said while in a barber-shop he saw two persons come out of a restaurant and that he thought one of them was Fred Stewart. I then told him that Fred Stewart did not disappear until the night of March 17, 1921, and Elwood then said that he might be mistaken in the man.

Cross-examination.

(Mr. RUPP.)

The time was about 3:15 in the afternoon when I went into Taylor's barber-shop. We close the bank at three [358] o'clock. I went there for the purpose of getting shaved. At the time of the conversation with Elwood I had not been in the barber's chair. The conversation there in the shop was between Mr. Elwood and myself. He placed the time about ten weeks prior to May 5th as the time when he had seen Stewart, and then I asked him what made him so sure it was ten weeks and he said, to be specific, it was on the 22d day of February, or Washington's birthday.

The lights on the slip at Kalama I think are the same now as they were on March 17th. I see the slip every day. When I got down to the slip that night Captain Reid was the only man there was there at that time. I left the sheriff behind. He was too slow for me.

Testimony of Lawrence Perry, for Plaintiff (In Rebuttal).

LAWRENCE PERRY, called as a witness in rebuttal for plaintiff, being sworn, testified as follows:

(Mr. LANGHORNE.)

My name is Lawrence Perry. I am now living at Kelso. I lived in Kalama from January, 1913, until September 1918. I was County Clerk for four years and County Treasurer about twenty-one months. I am acquainted with John Reid. I was in Kalama a day or two after Stewart's disappearance. I talked with Mr. Reid at the depot at that time. Reid told me "Stewart is in the river." In telling me who got off the boat he said that the three loggers, Chisholm and the drummer came up the slip and that Stewart did not.

I have seen George Elwood. I met him at the dock at Kalama in the early part of May of last year. I can't recall the date but it was the day he arrived at Kalama. I heard a conversation between Elwood and William Pomeroy and Paul G. Shotswell. I heard Elwood tell Shotswell and Pomeroy [359] that he was not absolutely positive nor was he certain that it was Stewart.

Cross-examination.

(Mr. RUPP.)

I am now in the insurance and real estate business. I was County Treasurer for twenty-one months. I quit before the term was over. I resigned some-

(Testimony of Lawrence Perry.)

what under fire. It was a political proposition.

The COURT.—What were you accused of?

The WITNESS.—Nothing, only the commissioners insisted on raising my bond. I had some divorce trouble with my wife and I guess they figured I was not a safe proposition.

Testimony of Russell Carothers, for Plaintiff (In Rebuttal).

RUSSELL CAROTHERS, called as a witness in rebuttal for plaintiff, being sworn, testified as follows:

(Mr. LANGHORNE.)

My name is Russell Carothers. I live in Kelso, Washington. I am acquainted with Mr. Elwood. I saw him in Kelso on or about the sixth or seventh of May of 1921. He was in Hunt's barber-shop. I heard him say something about having seen Fred Stewart in Hanford, California. I asked him to sign an affidavit to that effect and he replied, "No," he would not sign any affidavit because he might be mistaken in the man.

I went down to Kalama on March 17, 1921, the night of Stewart's disappearance. I must have arrived there by 10:30. There was light sufficient enough at the top of the slip for me to recognize people. [360]

Cross-examination.

(Mr. RUPP.)

My father was president of the bank when Stewart disappeared. He is not in Kelso now. He has

(Testimony of Russell Carothers.)

gone down to southern California. He left on the 6th of last month. He didn't tell me not to write to him. The last time I heard he said he would be here approximately two weeks. He is down there on account of my mother's health. I will correct myself in one particular. He told me not to write until I heard from him because they were going from one town to another.

I am acquainted with the surroundings at the depot in Kalama. It is well lighted there on the platform. I don't know who the lights are put up there by. I couldn't say whether it would be well lighted if the upper light at the slip was out at night.

Testimony of F. A. Byrd, for Plaintiff (Recalled in Rebuttal).

F. A. BYRD, produced as a witness on behalf of the plaintiff, being recalled in rebuttal, testified as follows:

(Mr. LANGHORNE.)

I am acquainted with George Elwood. I met him shortly after I came to Washington in 1904. I met him in Olympia about the 13th or 14th of last May. At that time I had read reports in the newspapers about Mr. Elwood having seen Mr. Stewart in southern California. I had a conversation with Elwood in the Olympia Hotel on the 13th or 14th of May concerning the report that he had seen Stewart in Southern California. During that conversation he told me that he saw some person in

(Testimony of F. A. Byrd.)

Hanford that he took to be Fred Stewart but that he did not speak to him and that he would not swear [361] it was Stewart he saw.

Cross-examination.

(Mr. RUPP.)

I heard Elwood say on yesterday that he told me that if it were not Stewart, his wife would be inclined to walk off with him. He did not say that to me.

Testimony of Grover Thornton, for Plaintiff (In Rebuttal).

GROVER THORNTON, called as a witness in rebuttal for plaintiff, being sworn, testified as follows:

(Mr. LANGHORNE.)

My name is Grover L. Thornton. I live at Kelso. I knew Fred Stewart. I went down to Kelso on the night of the 17th of March, 1921. After arriving there I met Captain Reid. I had a conversation with him that night. He told me that there were five men got off the boat. He also told me that Fred Stewart did not get off the boat. I asked him if it was possible for Fred to have gotten off disguised and he said absolutely there was no chance. There was plenty of light there on the slip that night.

Cross-examination.

(Mr. RUPP.)

The conversation between Reid and I took place on the slip. We were coming up from the boat at the time. I had not met Reid before that night.

(Testimony of J. W. Hogett.)

I have met him since. That was the only conversation I ever had with him.

Testimony of J. W. Hogett, for Plaintiff (Recalled in Rebuttal).

J. W. HOGETT, produced as a witness on behalf of the plaintiff, being recalled in rebuttal, testified as follows: [362]

(Mr. LANGHORNE.)

My name is J. W. Hogett. I am sheriff of Cowlitz Coutny, Washington. I had a conversation with John Reid on the 14th day of March, 1922, at the depot at Kalama. In that conversation he told me that he was going to swear that he saw Fred Stewart alive on the night of March 17, 1921. I then said to him, "I would be afraid to make that statement." He replied by saying, "I am not under oath. I can say anything."

I was down at the slip the night of Stewart's disappearance. I am not positive that the light at the head of the slip was burning but it was well lighted there. I should imagine it would be quite dark if that light was off unless the train is coming in. When the trains are coming in the railroad switches on lights there. There was light enough there when I got down there that night.

Cross-examination.

(Mr. RUPP.)

I went down there that night to find out if Stewart was drowned or not, to see if he had come off the boat or whether he was drowned. That was my duty there.

Testimony of Edward White, for Plaintiff (In Rebuttal).

EDWARD WHITE, called as witness in rebuttal for plaintiff, being sworn testified as follows: (Mr. LANGHORNE.)

My name is Edward White. I have lived in Kalama for between eight and ten years. I worked at the sheriff's office the last two years. I was in Kalama the night Fred Stewart disappeared off the boat. I heard of the disappearance the next morning. I talked with Captain John [363] Reid about Stewart's disappearance the day following his disappearance or the day after. In that conversation Reid told me that five passengers got off the boat, consisting of the three loggers, Chisholm and the drummer. I assisted in the search for Stewart's body, Captain Reid pointed out places to me in the river where I should search.

Cross-examination.

(Mr. RUPP.)

As to my present occupation I have a ranch and I worked around at different things. The last thing I done was working on the contract for the Port of Kalama. That was in January and February. I worked on the dock of the port until last Thursday.

Testimony of William Stuart, for Plaintiff (Recalled in Rebuttal).

WILLIAM STUART, witness for the plaintiff, being recalled in rebuttal, testified as follows:

I am acquainted with John Reid. I interviewed Mr. Reid in Kalama, Washington, in the early part of August of last year. There had been considerable pressure brought upon me by Mr. Wilton, the insurance man, to get me to file an information against Mr. Stewart. When I interviewed Mr. Reid he told me that it would be impossible for Mr. Stewart to get off that boat without him seeing him. He said he stood on the dock there and there was a bright light burning and he said there were five passengers got off the boat but that Fred Stewart never got off.

Cross-examination.

(Mr. KEENAN.)

I talked with one or two of the other men on the [364] boat. I think I talked with Mr. Shotswell. I am not sure but I talked with one or two of the other boatmen prior to the time I talked with Mr. Reid. The day I interviewed Captain Reid I talked with no one else with regard to the matter. There was not very much of an investigation we could make. The supposition was that Stewart was in the river. There was an administrator appointed for his estate. I did not come to the conclusion that because an administrator had been appointed it was "judicially found that he was dead." I have always been of the opinion that

(Testimony of William Stuart.)

Mr. Stewart committed suicide. That has been my personal opinion of course and I wanted something very definite before I would take any action in the matter.

Q. I will ask you again, didn't you tell him (Wilton) well, they have appointed an administrator and of course the Court found he was dead and "I don't think I will."

A. Yes, I presume I told him that. We had several conversations. He came to see me several times while he was in Kelso. I think he was in Kelso more than once.

I think I talked to Pomeroy, and maybe Shotswell. I am not certain about that. I don't know how many men Reid had working for him at that time. There are two ferries there at Kalama. I think Pomeroy had been working for Mr. Reid for some time. I know that Reid was not in charge of the "Queen" on the night of Stewart's disappearance. He told me he stayed on the dock. I am not criticising Mr. Reid for not wanting to get mixed up in this suit. He told me the report that Stewart was out or got away was all nonsense or bunk. I didn't ask him the names of the passengers that came off the boat. He did not give me the number of passengers that [365] went aboard at Goble. He said it would be impossible for anyone to get off the boat without him seeing him.

Testimony of W. S. Carson, for Plaintiff (In Rebuttal).

W. S. CARSON, called as witness in rebuttal for plaintiff, being sworn, testified as follows:
(Mr. LANGHORNE.)

My name is W. S. Carson. I have lived in Kalama, Washington, about thirty years. By occupation I am a contractor. I know John Reid. I had conversation with him two or three days after Stewart's disappearance. In that conversation he told me that Stewart could not have got off the boat without his knowledge, that only the three timber cruisers, the drummer and Jack Chisholm got off.

I went out and assisted in the search for Stewart's body. Reid pointed out places to me in the river where I should search. I followed his instructions.

Cross-examination.

(Mr. RUPP.)

I dragged the river for twelve or fourteen days. I quit because I couldn't find the body. I dragged in all the places that I thought it was likely the body would be found.

Testimony of John Hill, for Plaintiff (In Rebuttal).

JOHN HILL, called as a witness in rebuttal for plaintiff, being duly sworn, testified as follows:
(Mr. LANGHORNE.)

My name is John Hill. I have lived in Kalama Washington for thirteen years. I am by occupation a barber. I am acquainted with George Elwood.

(Testimony of John Hill.)

He was in my shop in the early part of May of 1921. I told him that a man by the [366] name of Crouch was looking for him and wanted him to sign an affidavit that he (Elwood) saw Stewart in California. Elwood replied by saying that he would not sign an affidavit for any one unless they guaranteed him \$10 per day and all expenses.

Cross-examination.

(Mr. RUPP.)

Elwood also said at the same time that that was about the amount he was making and that it might cover his expenses.

Testimony of Frank J. Sardam, for Plaintiff (Recalled in Rebuttal).

FRANK J. SARDAM, produced as a witness on behalf of the plaintiff, being recalled in rebuttal, testified as follows:

(Mr. LANGHORNE.)

I know George Elwood. I was not acquainted with him before May of last year. I noticed an article in the newspapers purporting to be a statement of Mr. Elwood that he had seen Fred Stewart in southern California. After reading this article I got in communication with Mr. Elwood. I wrote to him at Aberdeen, Washington, c/o the Washington Hotel. The letter that I wrote him was written on the stationary of the Bonneville Hotel. I never wrote him a letter on any stationary of the Travelers Insurance Company. I met Elwood in the city of Tacoma on May 14, 1921. I took him to

(Testimony of Frank J. Sardam.)

your office. Mr. Fitch was with me. While in your office he made this statement: "My name is George Elwood. I live near Ramona, California. I travel for a barber supply house. I once lived in Kelso. Knew Fred Stewart when I lived there. Have been away for several years. I was in Hanford, California, [367] on March 24th. I think that was the date. I was in a barber-shop and looking into a glass on the rear wall, I caught sight of a man going diagonally across the street that I thought was Fred Stewart, I went to the door and called him, but he paid no attention to me. I walked out on the sidewalk and then I thought he didn't want to recognize me. I didn't talk to him. He was some distance away. Of course I am not positive it was Stewart. I would not swear it was I have been mistaken about the identity of persons several times. Not long since I walked up to a lady on the street that I thought I knew and greeted her, but she did not respond, and I took another look and found I was rankly mistaken."

Cross-examination.

(Mr. RUPP.)

I did not sign the letter that I wrote to George Elwood "General Agent." I think I put my card in the envelope and give him my telephone number at the hotel. I think my office telephone number was also printed on the card.

I did not interrogate Mr. Elwood when he was in Mr. Langhorne's office. Mr. Fitch and Mr. Langhorne talked to him.

(Testimony of Frank J. Sardam.)

When Elwood arrived in Tacoma I met him in front of the Travelers Hotel on Pacific Avenue. We went right to Mr. Langhorne's office. Mr. Fitch was with me when I met Elwood. I went to the Travelers Hotel to meet Elwood as he told me he would be there. I guess I told Fitch when we started out that we were going to meet Elwood. I had no reason not to. The telephone number that I enclosed in my letter to Mr. Elwood at Aberdeen was the telephone number of [368] the hotel where I live. I did not put on the card Mr. Langhorne's telephone number.

Testimony of J. H. Binns, for Plaintiff (In Rebuttal).

J. H. BINNS, called as a witness in rebuttal for plaintiff, being first duly sworn, testified as follows: (Mr. LANGHORNE.)

I am a clerk in the office of Hayden, Langhorne & Metzger, attorneys. The two books that now lay before me contain the names of persons entering Rainier National Park during the season of 1914. I have examined these two books so far as they apply to registration during the year 1914. I went over the names one by one. I did that twice. The name of F. L. Stewart is not among those registered in these books. There is the name of Fred Stewart of Tacoma. He registered from Tacoma and came in on the Ashford stage. The Ashford stage is the one that connects with the train.

The books referred to admitted in evidence and marked Plaintiff's Exhibit 34 and 35.

(Testimony of J. H. Binns.)

Cross-examination.

(Mr. KEENAN.)

I have never been in the park. On examination of these books I find different names are frequently signed by the same person. It is obvious from examination of the books that the government did not require every individual to sign with his own name. I am not familiar with the handwriting of the lady who it is said accompanied Mr. Stewart, nor do I know who the lady was. There was nothing to prevent her signing her name and the name of the man she was with. I suppose it would be possible for Mr. Stewart to go into the [369] park and his name not appear on the register.

Testimony of Paul G. Shotswell, for Plaintiff (Recalled in Rebuttal).

PAUL G. SHOTSWELL, being recalled on behalf of the plaintiff, testified as follows:

The COURT.—You just tell about what you did in connection with searching the boat that night after landing.

The WITNESS.—Well, sir, when Mr. Reid came down the slip and went on board with Mr. Pomeroy I started walking up the slip and I noticed the drummer going past and I hollered to the drummer and asked him if he seen Mr. Stewart get off the boat and he said he didn't, then he and I went down together and Mr. Pomeroy and Mr. Reid all went through the boat, Mr. Pomeroy using a flashlight. I distinctly remember Mr. Pomeroy

(Testimony of Paul G. Shotswell.)

going into the engine-room and I stood at the top of the steps and watching him, then we all went off the boat then and went up to the depot and notified the sheriff.

The COURT.—Take the three of you together, some of you were all over every part of the boat?

The WITNESS.—The four of us.

The COURT.—The four of you. The drummer was with you?

The WITNESS.—The drummer was with us.

The COURT.—You collected the fare from Stewart?

The WITNESS.—Yes, sir.

The COURT.—Did you have any talk with Stewart either on the boat or before he took the boat, that is over at Goble?

The WITNESS.—Yes. I tried to get in conversation with Mr. Stewart. We talked about the weather. It was raining very hard that night. But he didn't want to talk.

The COURT.—That was before he came on the boat? [370]

The WITNESS.—No. That was while we were in the river and when I gave him his change I thanked him and he replied to it.

The COURT.—That is all.

Cross-examination.

(By Mr. KEENAN.)

Q. No, Captain Pomeroy has just testified that he did not go into the engine-room. Now he is mistaken and you are correct, is he?

(Testimony of Paul G. Shotswell.)

A. I think you are mistaken.

Q. You answer my question. If he so testified then he is mistaken and you are correct?

A. What is the question?

(Questions and answers read.)

A. He didn't testify he didn't go in the engine-room.

Mr. RUPP.—Make him answer the question that you put to him, assuming that he did.

The WITNESS.—I am not assuming that he did. I know he did not.

Mr. RUPP.—We have a right to make you assume that he did.

The COURT.—The court agrees with the witness on that, he having heard the testimony. The Court remembers that he said he went to the foot of the stairs in the engine room.

The WITNESS.—That is correct.

Mr. RUPP.—Then if that is the case I agree with the Court.

The COURT.—Anything further? The trial will be resumed at eleven o'clock on Monday.

Testimony of Percy T. Brush, for Plaintiff (In Rebuttal).

PERCY T. BRUSH, being called as a witness in rebuttal for plaintiff, being sworn, testified as follows; [371]

(Mr. LANGHORNE.)

My name is Percy T. Brush. I have lived in Tacoma since January 1, 1918. Prior to that time

(Testimony of Percy T. Brush.)

I lived at Kelso from 1908. I knew Fred L. Stewart. I was intimate with him. During the whole time I was in Kelso I was associated with Judge McKenney and we were counsel for the Kelso State Bank during all of that period. For some time I was counsel for that institution while Judge McKenney was on the bench. I then came in contact with Fred Stewart. The most noticeable thing that I observed about Stewart was the fact that when he talked and smiled and laughed he showed practically all the teeth he had. He had had a great deal of gold work done in his mouth, and as I remember now, the upper teeth on either side of his mouth were crowned with gold. I think as I remember, he had two or three or four of his front teeth were white, his natural teeth were white. On either side and back they were crowned with gold and they could be seen very distinctly when he talked.

The COURT.—You say two, three or four were natural. Do you mean in one jaw or both jaws.

The WITNESS.—I mean his upper front teeth, yes; I think that the four front teeth, if I remember rightly, were white.

The COURT.—Upper?

The WITNESS.—Yes.

Mr. Stewart was very active in the social and business life of Kelso. He was perhaps one of the most leading citizens of that section of the country. He was a very proud and sensitive man, very high-strung.

(Testimony of Percy T. Brush.)

I recognize Defendants' San Diego Exhibit "1." It [372] is a photograph of Fred Stewart as he appeared when I first knew him. The last time I remember seeing Fred Stewart was in the late summer of 1919 or 1920. At that time he did not wear his hair in the style shown in defendants' San Diego Exhibit No. 1.

I recognize Plaintiff's Exhibit No. "36." That is a photograph of Fred Stewart with his little boy and father also shown in the picture. I can't remember the exact date Stewart changed the style of wearing his hair but it was just about the time that I underwent the same transformation myself, which as I recollect, was in 1914.

I know that Mrs. Stewart had a trained nurse in attendance upon her during practically all of the summer of 1914. Our two families were quite intimate in a social way. My wife and Mrs. Stewart were intimate friends. I went to the beach during the latter part of July, 1914, and I know that for some weeks prior to our going Mrs. Stewart had been ill and had the nurse in attendance.

I know Fred L. Stewart's signature. The signature as shown me on Plaintiff's Exhibit "34," page 18, is not his signature.

Photograph, Plaintiff's Exhibit "36" offered and received in evidence.

Cross-examination.

(Mr. KEENAN.)

I left Kelso January 1, 1918. I couldn't say how many times I saw Mr. Stewart after that. I

(Testimony of Percy T. Brush.)

wouldn't undertake to say whether I saw him during the winters of 1920 and 1921. I can't remember. I think I saw him during the [373] summer of 1920. I was in Kelso on one or two occasions during that summer. Prior to the time Stewart started to comb his hair back he parted it, part of the time in the middle and part of the time a little left of the middle. When I started to combing my hair back some of my friends said it changed my appearance. I don't think I met any friends who did not recognize me because I changed the style of wearing my hair. Knowing Stewart as well as I did I would probably have recognized him had he lost all of his hair. I recognize the picture you show me as a picture of Stewart. I would say that my recollection is that when I saw him last he wore different glasses than those shown in the photograph. He looked a little older. His hair was also combed straight back. I don't find any difference in Defendants' San Diego Exhibit No. "1" and in the photograph shown me. As far as I know they are the same picture. I don't think the photograph annexed to the Hanford deposition which shows Stewart sitting in his office is a very good likeness of him, but I recognize him. I wouldn't say, however, that it is a fair likeness of him—not at the time I last saw him. It is a good likeness of him prior to the time he started brushing his hair back. I testified that Stewart was a sensitive man. I would say that his sensitiveness was directed more towards resenting criticism than any-

(Testimony of Percy T. Brush.)

thing else. If he was disagreed with on a matter I think he showed it more quickly than the average man.

When I was counsel for the bank I had a belief that all was not right with that institution. I heard no rumors that the bank would be closed except what was mentioned to me by Mr. Stewart or someone in connection with the bank. [374] Mr. Stewart never told me that he got any severe criticism from the banking department. I never knew that the bank examiner was there to examine the bank except on one occasion and I didn't see Mr. Stewart at that time and consequently I paid very little attention to it.

Testimony of Henry J. Ashbury, for Plaintiff (In Rebuttal).

HENRY J. ASHBURY, called as a witness in rebuttal for plaintiff, being sworn, testified as follows:

(Mr. LANGHORNE.)

My name *of* Henry J. Ashbury. I live at 1219 South 14th Street, Tacoma. I have lived there for thirty-two years. My occupation is that of a barber. I have been in that business since I was about seventeen years old. I am familiar with the different styles of hair cuts that men wear. I have often cut hair in pompadour style. I recognize Defendants' San Diego Exhibit No. "1." That photograph shows the style in which Mr. Stewart wore his hair when he served in the State Senate. Assuming that

(Testimony of Henry J. Ashbury.)
the man in the photograph (Plaintiff's Exhibit "36") had worn his hair in pompadour style for seven or eight years I don't think, from the thinness of the hair, that he could ever get it back in the style shown in Defendants' San Diego Exhibit "No. 1."

Testimony of Paul G. Shotswell, for Plaintiff (Recalled in Rebuttal).

PAUL G. SHOTSWELL, being recalled in rebuttal on behalf of plaintiff, testified as follows:
(Mr. LANGHORNE.)

I never saw Captain Reid or any one else walk around on the three-inch planking on the "Queen" either while the boat was standing still or in motion. The average rate of speed the boat makes when crossing the Columbia River is [375] ten or twelve miles an hour. It depends upon the condition of the river and wind as to whether there is any sway to the boat when it is in motion. I should judge that the boat had a little movement to her under the conditions that prevailed on the night of March 17, 1921.

I know George Elwood. I saw him at Kalama last year. I never saw him there more than once. Pomeroy was present. When Elwood stated the date when he said he had seen Stewart in California, Captain Pomeroy threw up his hands and said, "You are off your trolley." In the same conversation Elwood stated he would not positively

(Testimony of Paul G. Shotswell.)
swear that it was Stewart he thought he saw in California.

Cross-examination.

(Mr. KEENAN.)

Captain Reid heard this conversation that I have just testified to. I remember your (Mr. Keenan) being down in Kalama week before last. I had conversation with you at that time. I didn't tell you that I didn't remember any conversation that I had with Elwood.

On the rear platform of the boat there is a hatchway. It is not a way to go into the boat. It is a way to get to adjust your tiller line.

Redirect Examination.

(Mr. LANGHORNE.)

This hatchway is a way we have of adjusting the tiller line. It don't lead anywhere to the forward part of the boat. It leads nowhere. It would be impossible for a man to hide himself in that little place. [376]

Testimony of C. M. Taylor, for Plaintiff (In Rebuttal).

C. M. TAYLOR, called as a witness in rebuttal for plaintiff, being sworn, testified as follows:

My name is C. M. Taylor. I have lived in Kalama for about thirty years. I am forty-four years old. My occupation is that of a barber. I was running a barber shop on May 5th and 6th of 1921.

(Testimony of C. M. Taylor.)

I know George Elwood. I knew who he was when he lived at Kelso but was not personally acquainted with him then. Elwood was in my barber-shop on May 5th or 6th of 1921. While there he stated that he saw Fred Stewart in Hanford, California, on February 22, 1921, and he also stated that he knew that it was that date because it was George Washington's birthday, and that it was a holiday and that he was not compelled to work, and that only the barber-shops and restaurants were open in Hanford on that date. After Elwood stated this Mr. Campbell who was present, informed him that Stewart did not disappear until March 17, 1921, and Elwood then said he was probably mistaken about seeing Fred Stewart in Hanford.

Cross-examination.

(Mr. KEENAN.)

During that conversation I asked Elwood how business was in California. I am not hard of hearing. I heard all the conversation that took place between Elwood and Campbell. I said the conversation was more between Campbell and Elwood than myself, because I was busy. I was cutting a man's hair at the time.

Testimony of A. H. Imus, for Plaintiff (In Rebuttal).

A. H. IMUS called as a witness in rebuttal for [377] plaintiff being sworn, testified as follows:
(Mr. LANGHORNE.)

My name is A. H. Imus. I live in Kalama. I

(Testimony of A. H. Imus.)

have lived in Kalama for thirty-three years. My occupation is that of a lawyer. I am one of the attorneys for the plaintiff in this case. I heard the statement of Captain Reid about my trying to induce him to sign an affidavit. What I did say to him was about as follows:

I went down to the dock and met Reid and told him I had just received a letter from Mr. Langhorne asking me to get an affidavit showing the facts and circumstances of Stewart's disappearance and Reid commenced to cuss Mr. Langhorne and abused him like everything and said something about political treachery. He seemed to be very sore at Mr. Langhorne and when he got cooled off so I could talk to him again I told him that Mr. Langhorne was not the only attorney in the case and asked him if he would not disregard his feeling toward Mr. Langhorne and make an affidavit of the facts as a personal favor to me. I didn't tell him there would be any money in it and I didn't tell him I wanted him to make an affidavit that Stewart was dead. I explained to him that it was a case of circumstantial evidence and we would have to get the facts and circumstances surrounding Mr. Stewart's disappearance in order to make the proof of loss and we desired the affidavit to submit to the insurance company.

I know Jack Chisholm. He was in my office in May, 1921. I don't remember the exact date. He told me what occurred on the night of March 17th. He said that he had jumped off the boat before it

(Testimony of A. H. Imus.)

had fairly stopped and was probably at the top of the slip before anybody else got off. He said [378] it was a stormy night and he was anxious to get home. He said he noticed Captain Reid at the top of the slip but aside from that he saw nobody, never looked back and hurried home.

Cross-examination.

(Mr. KEENAN.)

The difference between what Chisholm said to me at that time and what he testified to the other day is that he told me he never looked back and never saw anybody after he got off the boat but Captain Reid. I never asked him if he saw Stewart. I think Mr. Langhorne did the talking. He said he never looked back from the time he left the boat and never saw anybody on his way home but Captain Reid at the top of the slip. I can't give any reason for his having made such a statement as that excepting to convince us that he saw no person from the time he left the boat besides Captain Reid. After this interview I had with Chisholm I had no further interview with him until about a week before this case was set for trial. At that time Mr. Langhorne was in Kalama and I had Mr. Chisholm come to the office and I explained to him in the presence of Mr. Langhorne, Mr. Fitch and Mrs. Stewart that the case was set for trial on next Tuesday and that it had been such a long time since we had our former talk that we wanted to go over the facts again and refresh our memories

(Testimony of A. H. Imus.)

and he (Chisholm) then said "I shall not say anything until I get on the witness-stand."

Redirect Examination

(Mr. LANGHORNE.)

I heard Captain Reid's statement that he had never talked with you (Mr. Langhorne) since this case commenced. I recall the first time you came to Kalama after Mr. Stewart's [379] disappearance. It was some time in May, 1921. I recall seeing Captain Reid, Mr. Fitch and yourself in conversation at the depot. I can't tell how long that conversation lasted as I left you and Mr. Fitch and Captain Reid and walked up to my office with Mr. Sardam. I should judge it was about fifteen minutes before you came up there.

Recross-examination.

(Mr. KEENAN.)

I didn't hear the conversation between Mr. Langhorne and Captain Reid. I didn't pay any attention to the conversation.

I also tried to get an affidavit from Pomeroy in regard to Stewart's disappearance. Mr. Pomeroy told me the facts but he didn't want to give any affidavit but said he would swear on the witness-stand to the facts. He seemed to be a little superstitious about an affidavit.

Mr. LANGHORNE.—In order to avoid calling a witness it will be stipulated between counsel that a person leaving Portland at midnight on the night of the 17th of March, 1921, could not possibly have

(Testimony of G. H. Thayer.)

reached Hanford, California, before 9:20 P. M. on the night of March 19, 1921.

Mr. RUPP.—If he went around by San Francisco he would get in at 8:55 on the evening of the 19th.

Mr. LANGHORNE.—Well, all right.

Testimony of G. H. Thayer, for Plaintiff (Recalled in Rebuttal).

G. H. THAYER, produced as a witness on behalf of the plaintiff, being recalled in rebuttal, testified as follows:

(Mr. IMUS.)

I know that there is a small hatch on the rear of [380] the "Queen." A man can't climb down into it. It is directly over where the rudder post comes up through the boat and is for the purpose of getting at the tiller to adjust the tiller line. I don't think it is more than a foot from the hatch down to the planking of the boat.

I heard Captain Reid testify the other day that there were two entrances to the engine-room. The one from the pilot-house goes down probably five or six feet into the engine-room and the other goes in from the forward end of the cabin.

It is a common thing to see automobiles standing on Geranium Street near the corner of River Street almost any time of the day or night.

Cross-examination.

(Mr. KEENAN.)

I worked for Captain Reid on the "Queen." I never was discharged that I know of. I have not

(Testimony of G. H. Thayer.)

worked for him now for over a year. I quit voluntarily. Defendant's Exhibit "Y" for identification is a fair plan of the deck of the "Queen." The space with the word "cabin" on represents the cabin on the boat. And the rear end of the exhibit, the place where the diagonal line is, represents a door that goes from the cabin out to the rear platform. The space designated "engine-room" is located in relation to the cabin just as it is represented on the plat. I think there is about fifty feet of space underneath the entire deck.

At the point where the automobile is said to have been standing there isn't any building.

**Testimony of William J. Pomeroy, for Plaintiff
(Recalled in Rebuttal).**

WILLIAM J. POMEROY, produced as a witness on behalf of the plaintiff, being recalled in rebuttal, testified as [381] follows:
(Mr. LANGHORNE.)

My name is William J. Pomeroy. I have worked on the "Queen" for six or seven years. During all that time I never saw Captain Reid or anybody else walk around that little three inch plank-ing on that steamer.

I am familiar with the point where it is said that an automobile was standing on the night of March 17th. I have often seen automobiles standing at that same place both day and night.

When I am sitting in the pilot-house my head and shoulders are above the after cabin. The after

(Testimony of J. Pomeroy.)

cabin is where the people sit. When I am running the boat across the river I am continuously looking around behind me. I am compelled to do that. If you don't look behind you you are liable to get run over. There is a light in front of my cabin. There was one on the roof of the boat on the night of March 17th as we crossed the river.

Cross-examination.

Mr. RUPP.)

The steamer "Queen" is 58 inches over all. From the forward end of the pilot-house to the forward end of the boat is about 21 feet 6 inches. There is a hatch in the forward end of the boat. It is about 22 inches square. There is a hatch in the after end of the boat. I should judge it is about 16 inches square. The cabin is 13 or 14 feet long—something like that. The engine-room is about 10 feet. The pilot-house I should say is 3½ feet. All measurements are measured under deck. The passageways are about [382] 2 feet 8 inches or 2 feet six inches. The railing shown is about 30 inches high.

I don't know whether the tracts marked "A," "B" and "C" on the plat shown me belong to the railroad company or not. I don't know whether the tract marked "B" was entirely unoccupied.

Q. How about this tract in here; did it have anything on it except the bill board.

Mr. LANGHORNE.—That is where the automobile stood.

A. Yes; a blacksmith-shop and a building both.

(Testimony of William J. Pomeroy.)

Q. Where on this tract of ground is this blacksmith-shop?

A. I should judge it is right in here (indicating).

Q. All right, we will mark that "C" then. You think the blacksmith-shop is there? A. Yes.

There is nothing in the space marked "B" except a garden. There is no building in the block marked "C" except a blacksmith-shop and there is a warehouse right in there. The warehouse is about 150 feet back from Geranium Street. The picture shown me looks like the locality we have been talk-about, looking from the depot up town. It does not show the blacksmith-shop. That shop is behind that bill board. The bill-board also shuts off the view of the warehouse.

Photograph referred to admitted in evidence and marked Defendants' Exhibit "Z."

Mr. RUPP.—I offer this deck plan of the boat in evidence as a part of the cross-examination.

Diagram referred to is admitted in evidence and marked Defendants' Exhibit "Y." [383]

Testimony of A. J. Davis, for Plaintiff (In Rebuttal).

A. J. DAVIS, called as a witness in rebuttal for plaintiff, being sworn, testified as follows:

My name is A. J. Davis. I live in Tacoma. Previous to living in Tacoma I lived in Kelso for five years. While there I was engaged in the shingle business. I knew Fred L. Stewart very well. We had business dealings all the time I was

(Testimony of A. J. Davis.)

there. Some of the noticeable things about Fred Stewart's appearance was his erect carriage and when I first knew him he had quite a heavy head of hair, very wavy; gold teeth that were more or less noticeable—I think quite so. I always noticed his teeth. There were gold fillings on both sides. Before I left Kelso I noticed that Stewart had changed his style of wearing his hair. He was combing it straight back. The waves had disappeared.

I recognize Defendants' San Diego Exhibit "1" as a photograph of Fred Stewart as he appeared when I first knew him. He had no such head of hair as shown in that photograph when I last saw him. His hair was considerably thinner.

Cross-examination.

(Mr. KEENAN.)

I presume I would have recognized him no matter how he combed his hair. I have known him for ten or twelve years. I presume I know a great many men who have some gold in their teeth. Mr. Stewart had an erect carriage,—that is, some time ago. I have not seen so much of him for the last four or five years.

Testimony of Hazel Brush, for Plaintiff (In Rebuttal).

HAZEL BRUSH, being called as a witness in rebuttal for plaintiff, being sworn, testified as follows: [384]

(Mr. LANGHORNE.)

My name is Hazel Brush. I am the wife of P. T.

(Testimony of Hazel Brush.)

Brush who testified this morning. I am now living in Tacoma. In 1914 we lived in Kelso. When living there I was very well acquainted with Mr. and Mrs. Fred L. Stewart. I know that on Easter Sunday in 1914 Mrs. Stewart came home from Portland and that she was ill all that summer and I was there all of the time except during August; and when I came home from the beach where we had been, she was still in bed and was there during all the month of September.

Testimony of Maude E. Stewart, in Her Own Behalf (Recalled in Rebuttal).

MAUDE E. STEWART, the plaintiff, being recalled on her own behalf in rebuttal, testified as follows:

(Mr. LANGHORNE.)

Defendants' San Diego Exhibit "1," which is a photograph of my husband was taken before I ever knew him and I met him in September of 1909. Plaintiff's Exhibit 36 which is a photograph of my husband was taken in September of 1920. About eight years ago, Mr. Stewart started to comb his hair pompadour, combed in straight back, and his hair had thinned a great deal the last few years and had grown back so that he was bald back of the temples, and his hair was very much thinner.

Mr. Stewart did not go to Rainier National Park in 1914. Mr. Stewart never was at the mountain until 1919 when he went on the Northern Life trip. The Northern Life offers some sort of a trip to

(Testimony of Maude E. Stewart.)

their agents who have written \$100,000 of life insurance, and my husband had qualified that year and we both took this trip to the mountain in 1919. I know positively that this was the first trip he had ever [385] made to the mountain. I was ill in 1914 from Easter Sunday until the last of September and Mr. Stewart was not away from home overnight during that time. The nature of my illness was tubercular. My physicians were Ralph Matson of Portland and Dr. Knox. I had a nurse with me from the 12th of April, 1914 until the last of September, 1914.

I heard the testimony of Mr. Onorato that he saw me and my boy in Elsinore, California subsequent to July 1, 1921. That is not true. I left Elsinore, California, the 14th day of June, 1921, and have not been back there since. When I left Elsinore I went to Los Altos, a little town about eighteen miles from San Jose, to my aunt's and stayed there for six weeks. I reached Los Altos the 15th of June. The reason I remember this, my sister was leaving for the east that same day.

Mr. Stewart had a very fair skin. I heard read the deposition of one of the men on the boat running between San Pedro and the Mexican ports, who testified that his complexion was sandy or reddish but that does not describe my husband. Mr. Stewart could not swim. I never saw him in the water in my life. We have been to the beach together.

I had an interview with Captain Reid on March 29, 1921, in Kalama. During that interview I

(Testimony of Maude E. Stewart.)

asked him why he was now telling that six men got off the boat when he formerly told me there were only five and he replied by stating that he did not remember of ever telling me that only five men got off the boat. I told him that he did so tell me and he then replied by saying that he was not on the witness-stand and that he could say anything he wanted to. I asked him in the same conversation why his views had changed since [386] August, 1921, when he told me that his testimony would win the case. He replied by saying, "That was before the other matter came up" and I asked him what he meant by that remark and he said "That was before the insurance companies started fighting you so hard." I then said to him, "How would that add one to the number of men you now say got off the boat," and he said, "I can't remember of telling you that only five men got off the boat," and I said, "I certainly remember of your telling me that," and he then said, "It is your word against mine and the Court will have to choose between us."

Cross-examination.

(Mr. RUPP.)

I had a picture of myself and son taken some time ago. Mr. Stewart kept a copy of that photograph in the bank. I asked for that picture on the 18th of March and Mr. Plamondon said he could not find it but when I was in Kelso last summer Miss Waugh brought me the picture and said she located it in the drawer of the desk.

(Testimony of Maude E. Stewart.)

Redirect Examination.

(Mr. LANGHORNE.)

Defendants' Exhibit "D" which is a photograph of my husband was taken about ¹⁹¹⁷1921. I can't say exactly. I think it was taken shortly after the bank was built.

Recross-examination.

(Mr. RUPP.)

The date when Miss Waugh delivered me this photograph I have spoken of was some time last summer.

I was in Elsinore some time prior to June 14th. I had been there from the 31st of March to the last named [387] date. Elsinore is a very small town. Of course myself and boy would walk around the streets once in a while.

Testimony of Francis K. Wilton, for Plaintiff.

FRANCIS K. WILTON, called as a witness by the plaintiff, being first duly sworn, testified as follows:

(Mr. LANGHORNE.)

My name is Francis K. Wilton. I live in Chicago, Illinois. I am thirty-seven years old. I am an investigator for The Prudential Insurance Company of American, one of the defendants in this action. I started out on this investigation on June 3, 1921. I began making my investigations at Kelso, Washington. I procured a photograph of Fred Stewart at that place. I had duplicates made of that photograph. It is the same one that has

been introduced in evidence at San Francisco, Hanford and Riverside.

Mr. LANGHORNE.—That is the plaintiff's case, your Honor.

The COURT.—Is all the evidence in?

Mr. RUPP.—Defendants rest. I now move at this time, if the Court please, for a dismissal of this action upon the ground, first, that there was no satisfactory proof of death presented to the life insurance companies, or either of them, prior to the commencement of this action, or at any other time, and second, upon the whole case there is no sufficient evidence of the death of the said Frederick L. Stewart.

The COURT.—Does either side desire to argue the case? Of course I will consider that motion along with any argument on the facts.

Thereupon the case was argued to the Court by Mr. Rupp and Mr. Keenan for the defendants and by Mr. Langhorne for the plaintiff. [388]

Decision of the Court.

The COURT.—I think I am as well prepared to decide this case now as I would be if I should take such odd times as I can take from my other work to peruse the depositions and study the record in the case further, and that is all that I would be able to do if I did not decide it now. It might be more satisfactory to sit down and take this record and go through it thoroughly again uninterruptedly in the Court's chambers or closet, but it can't be done.

Regarding the law of the case it appears to me that there is this distinction between the question of suicide as it ordinarily comes up in these cases and this case: In the ordinary case where suicide is considered, the presumption that a man did not kill himself, that is where his death is proven, the presumption that he died by some other means than his own hand intentionally used against himself stands out without anything to take from it, but in this case the Court is asked to choose between the theory that he destroyed himself physically by his own act and the theory that he banished himself from his friends and relatives forever and became a wanderer and a tramp on the face of the earth, constantly alert, scanning every face for some look of recognition. You say he was a longheaded man. If he was he must have known that was the fate that awaited him if he fled.

The importance of just what was in his mind and what his circumstances were cannot be over-estimated in determining just what he did and to understand the actions that witnesses have testified to, testifying on his part. [389] Now the fact that he was in trouble and had been in trouble for a long time might make him a fugitive or might make him a suicide. That does not get the Court or anyone else very far in determining just what he did. His conduct on that morning in parting from his family I interpret that he had not yet made up his mind to commit suicide, though he had been thinking of it. Hope is very strong in every one. After he learned at Portland or after this bank examiner

or officer Hay left him there and after he learned that the bank was closed, I think he began, in addition to his other motives, thinking of suicide, and possibly thinking of the alternative of escape, that he then began to fear arrest, whether rightly or whether he deserved arrest or whether he did not. What the Court looks for is what the condition of his mind was. He probably got to thinking that is what Hay had gone back for, to close the bank and get out papers for his arrest. Therefore when he left the hotel he probably intended, just as defendants' counsel have argued, to go down the river, but he took a taxi for the Union Station so that if inquiry was made after he left by anyone seeking his arrest they would be thrown off the scent to that extent temporarily.

If, as defendants' counsel have argued, he was seeking to act strangely and attract attention he would not have stopped outside the Union Station, out there in the dark, where the porter alone saw him. He would have paraded himself through the corridors of the station I take it. Evidently he thought there might be some one in the station he would not want to meet. He then went to take the train down the river. As I conclude, possibly he had not yet made up his mind to commit suicide. A man would naturally [390] put it off as long as he could unless he was suddenly overcome with an impulse. It is not exactly clear about his conduct on that trip down the river to the Court, but when you say that he was laying the foundation for his flight, but to to create the impression that

he committed suicide, probably a man who is going to commit suicide for the benefit of those he leaves behind him, he may dread if he takes the step that he may be rescued when he doesn't want to be rescued, and yet he wants to make it so sure that there will be witnesses that he did kill himself that he wants to have it done under circumstances where he will not only not be immediately rescued, say he determined to drown himself, but that a sufficient number of witnesses will know that that was the only way he could have disappeared. Therefore the fact that he did many things on the trip down to attract attention to himself weighs about as much one way as the other. That is he wanted everybody to recognize him so that each step could be traced, whichever motive was in his mind. That conduct would be about as natural in one case as the other.

His getting on the boat and his conduct from there on it seems to the Court the more reasonable explanation of it is that it was suicide, because whatever did happen he could not have anticipated that that is the way it would turn out. He knew he was a marked man, he knew the bank was closed, knew they were all watching him, knew or probably felt that he would be followed up, his motions on the boat. Shotswell who collected his fare did not collect it when he collected it from others and he stood there watching him. So when he went out the rear of the boat he would feel that [391] that he probably would be followed within a half a minute; he could not know that he would

not immediately be followed out there and could hang on the side of the boat in perfect security, that no one was thinking of him and no one on the boat had him in the least in their minds. He must have felt they were all thinking about him more or less, whether they were or not.

This conduct such as his has been studied by dramatists and novelists and I think that his reasoning, his emotions and his actions probably pictured by that of Oily Gammon and John Carker, and this writing of letters and making appointments and having his car fixed, arranging for it in Portland, and all those things are old symptoms and actions of men who are contemplating destroying themselves. If he contemplated flight to southern California he never would have mentioned his wife going to his father in California and he never would have talked with the garage man about his taking a trip to California. If he was going to run the other way he might have done so. The Court cannot conceive that a man as well known as he apparently was and living as near Portland as he did would ever flee from Kalama and take that night train for California. It might happen three times out of four that he would not see anybody on that train that he would know, but he would feel that every train that he got on between Portland and California would be full of people he would know.

Again the use by him, if he contemplated flight, of a life-preserver, if he had any confederate, and the Court finds nothing in this case to justify a

suspicion that he [392] could have had a confederate, things moved so fast from the time that Hay came, the night before. When he went to Portland, as I have found, he still was strong in hope that he might get through, and therefore I cannot find any opportunity for confederation or any—not opportunity, but any incentive to be formulating a plot to build up a suicide theory at Kalama. That is before he went to Portland. If in the afternoon at Portland such a thing came into his mind, how is the Court to find anything to base a conclusion on that he had the opportunity to do it. He could not with five men on the boat and he knew not how many at the landing, a lighted landing, what hope—whether he did in fact go up there without anybody seeing him, he could not hope to do so; he could not know in his own mind that it would turn out that way. If he was tortured with a fear of discovery, why, he would think that everybody was looking for him and many people down there that he would have to run the gauntlet of as he went up that slip.

About the men Mr. Shotswell and Mr. Reid, the Court concludes that in the flight of time, talking about this many times and thinking about it many times, this man that they testified to having gone over across the tracks there between them each one probably saw the other and what they think they recollect about that is either Mr. Shotswell has confused Mr. Reid with that man that went up there or with some of the others who followed later. What leads me to that conclusion is this: that it

was very apparent that Mr. Shotswell wanted to get that man as far from him as he could down toward Mr. Reid and Mr. Reid seemed equally inclined to get him up as close to Shotswell as he could. [393]

Mr. LANGHORNE.—Chisholm.

The COURT.—Chisholm, yes. Mr. Reid had him almost up there going across where Chisholm went across and Mr. Chisholm had him almost back as far as Reid was standing. This matter of the automobile, this court has tried so many cases where there were automobiles acting strangely down in that country for other reasons than people running away that were insured, that even if that automobile was acting strangely, the Court does not associate it particularly with Mr. Stewart.

There is more difficulty so far as the Court is concerned with the fact that the body is not recovered and Mr. Elwood. Is that the man's name?

Mr. KEENAN.—Yes.

The COURT.—But his body was not recovered and other bodies have not been recovered. If he was building up a proposition that he wanted to leave the impression that he had drowned himself when he hadn't—men often leave their old clothes on the bank of a river or hat or something—it would not have been very difficult for Mr. Stewart to have provided himself with some package that would have floated that might have been found, if he was a very longheaded man.

Regarding Mr. Elwood's testimony, aside from the fact that I have pointed out that one of the

last things in the world Mr. Stewart would have done is to have taken immediately a train for California, is this: What he would necessarily have to have done to have reached Hanford by the 20th. It was physically possible, but undoubtedly the railroad men on the train that he must have taken would [394] have seen him, if he tried to hide in a stateroom so that he would not see anybody that he might know the porters on the train would have remembered it, and if he did not freely move about the train others he probably knew would have seen him. The Court concludes that Mr. Elwood did see somebody in Hanford on the 20th that he thought was Stewart. Why I think it was the 20th is this: that Mr. Elwood said it was the 22d of February; he said it was a holiday, when the restaurants and barber-shops were open. Well, the 20th, as I look at the calendar, appeared to be Sunday, and probably there would be only a few places open on Sunday. But all of these witnesses that have seen men that they thought—testified was Fred Stewart—It must have been true that in everyone's life they have had experience when they mistook one person for another, for what I presume people in thinking about cases of mistaken identity do not sufficiently take into account is this: That you pass a person on the street and you are mistaken about who he is. There is nothing to call your attention ordinarily to the fact that you are mistaken. You go on thinking that is the man you met. In the humdrum ordinary existence of an individual nothing comes in view to correct

your mistake. Therefore out of all the people on the Pacific Coast, when a man that was well known, prominently known, to many people, suddenly disappears it is not at all extraordinary that within the course of several months among the people who knew him may be found people that thought they had seen him after the event, that is taking into account the fact that the event that has disappeared has not been called to their attention [395] until after the time that they thought they saw him. In such case as that the proof, to overcome this well known fact or facts that when thought about must be realized, would have to be a much more positive identification than anything that has occurred in this case. People seeing one another in passing automobiles or seeing one pass in an automobile or seeing one on a sidewalk when they are riding in an automobile, certainly falls far short of what is necessary. As the man who claims to have met him on the sidewalk he did not speak to him. The very fact that he did not speak to a man whom he knew, meeting him away from home, goes a long way to convince the Court that the recognition dwells more in memory than was actual at the time. From his conduct on the boat it appears to me that he had not probably until the last moment made up his mind to actually commit suicide. I do not need to be told that he did not sleep the night before and he had been driving hard all day, while he was in Portland trying to find a way out, and then when Hay left him going on with his writing and other activities, and getting on the train

and that did not go fast enough and getting into an automobile and driving that, and probably the first time he slowed up or tried to slow up was after he got on the bow of that boat, and he could not do it.

Judgment for plaintiff.

Mr. RUPP.—In order that the record may be kept correct, you deny my motion to dismiss, I except and you allow an exception.

The COURT.—Motion denied and exception allowed. [396]

COPY OF RULE 75.—BILLS OF EXCEPTIONS.

A bill of exceptions to any ruling may be reduced to writing and settled and signed by the Judge at the time the ruling is made, or at any subsequent time during the trial, if the ruling was made during a trial, or within such time as the Court or Judge may allow by order made at the time of the ruling, or if the ruling was during a trial, by order made at any time during the trial, or within the time herein after mentioned, and when so signed shall be filed with the clerk.

If not settled and signed as above provided, a bill of exceptions may be settled and signed as follows:

The party desiring the bill shall within ten days after the ruling was made, or if such ruling was made during a trial, within ten days after the rendition of the verdict, or, if the case was tried without a jury within ten days after written notice of the

rendition of the decision, serve upon the adverse party a draft of the proposed bill of exceptions. The exception must be accompanied with a concise statement of so much of the evidence or other matter as is necessary to explain the exception and its relation to the case, and to show that the ruling tended to prejudice the rights of such party. Within ten days after such service, the adverse party may serve upon the proposing party proposed amendments to the proposed bill. Such proposed bill and the proposed amendments shall within five days thereafter be delivered by the proposing party to the clerk for the Judge. The Clerk must, as soon as practicable thereafter, deliver said proposed bill and amendments to the Judge, who must thereupon designate a time at which he will settle the bill; and the clerk must, as soon as practicable, thereafter notify or inform both [397] parties of the time so designated by the Judge. In settling the bill the Judge must see that it conforms to the truth, and that it is in proper form, notwithstanding that it may have been agreed to by the parties, or that no amendments may have been proposed to it, and must strike out of it all irrelevant, unnecessary, redundant, and scandalous matter. After the bill is settled, it must be engrossed by the party who proposed the bill, and the Judge must thereupon attach his certificate that the bill is a true bill of exceptions; and said bill must thereupon be filed with the clerk. [398]

State of Washington,
County of Pierce,—ss.

BE IT REMEMBERED, these causes coming on at this time and regularly to be heard in open court, in conformity with the rules of said Court, for the settlement and certification of the bill of exceptions in the foregoing entitled actions pursuant to due notice, all parties being present by their respective counsel;

Therefore, I, Edward E. Cushman, Judge of the United States District Court for the Western District of Washington, Southern Division, the Judge before whom said causes were tried, in conformity with the rules of said Court, do hereby certify that the matters and proceedings contained in the foregoing bill of exceptions are matters and proceedings occurring in said causes and the same are hereby made a part of the record herein, and that the same contains all the exhibits and all the material facts, matters and proceedings heretofore occurring, and the evidence received in said causes, not already a part of the record herein.

I do hereby further certify that the foregoing bill of exceptions contains all the evidence and testimony adduced upon the trial of said causes, together with all objections and exceptions made and taken, at the time, to the admission or exclusion of testimony, and all motions, offers to prove, and admissions and rulings thereon, and all objections and exceptions taken and allowed at the time of

the respective rulings, and that the exhibits herein mentioned and hereto attached are all the exhibits adduced upon the trial of said causes.

I do hereby further certify that the foregoing bill of exceptions was prepared and submitted to Maurice A. Langhorne, [399] attorney for plaintiff, on the 26th day of May, 1922, for his examination and inspection; that on or about June 6, 1922, he returned said bill of exceptions to Otto B. Rupp, one of the attorneys for defendants with certain additions and amendments thereto and all of which were accepted by defendants, thereupon said bill of exceptions was assembled and bound together with all the amendments and additions submitted by said counsel for plaintiff, whereupon the contents of said bill of exceptions with all the exhibits on file in the Clerk's office to be annexed was agreed upon by all parties to said action. Service of the same was admitted by counsel for plaintiff on June 14th, 1922, and was within proper time delivered to the Clerk of this court on said 14th day of June, 1922, in accordance with rule seventy-five of this court, and no amendments have been offered, no objections made to the form or contents of said bill since its delivery to the clerk; that the Clerk of said court did not deliver to, nor call to the Court's attention to the delivery of said bill of exceptions to him; that on June 14th, 1922, on stipulation of the parties, an order was made and entered herein by this Court directing that certain exhibits be sent up on writ of error and not copied into the records;

that at all of said times the following was and is a rule of this court:

“In all cases which, within thirty (30) days prior to the expiration of a term of court, an order, judgment or decree has been made or entered, the terms shall be extended for thirty (30) days beyond the statutory period for further action and proceedings therein. This rule to take effect as of May 1, 1922”;

that within such period of thirty (30) days, viz: on July 31, 1922, this Court fixed this, the 5th day of August, 1922, in open court, as the time and place for the certification and settlement of the Bill of Exceptions in said causes; [400] that on July 11, 1922, counsel for defendants ascertaining that the agreed bill of exceptions had not been certified, conferred with H. G. Fitch of counsel for plaintiff and requested that he go with them before the Court and have the bill certified, and at the request of counsel for plaintiff no further action was taken in the matter by counsel for defendants until July 26th when a motion was made to bring the matter before the Court; said motion was set down by the Clerk for July 31st, 1922, and pursuant to the request of counsel for the plaintiff, continued to August 5, 1922; that in the settlement and certification of the bill of exceptions the Court considered the affidavits of Otto B. Rupp, the affidavit of J. E. Peterson, and the affidavit of H. G. Fitch, on file in said causes, and also rule seventy-five of this court, a copy of which is attached to said bill of exceptions.

This bill of exceptions is signed over the objection and protest of counsel for plaintiff, based upon the proposition that this Court is without jurisdiction to sign and settle said bill of exceptions upon the ground and for the reason that the February, 1922, term of this court expired on July 3, 1922, but said objection is overruled and an exception allowed.

I further certify that since June 14, 1922, the date on which the bill of exceptions was lodged with the Clerk of this court, I have been at all times within the district holding court either in Tacoma or Seattle.

Done in open court this 5th day of August, 1922.

EDWARD E. CUSHMAN,

Judge. [401]

[Indorsed]: Aug. 5, 1922. [402]

No. 3436—No. 3437.

Assignments of Error.

Now comes the Prudential Insurance Company of America, one of the defendants in the above-numbered and entitled causes, and in connection with its petition for a writ of error in this cause, assigns the following errors which defendant avers occurred on the trial thereof, and upon which it relies to reverse the judgment entered herein as appears of record:

I. In permitting the witness, Claude P. Hay, the bank examiner to testify, in substance, as follows:

I closed the bank. I found arms, pistols and a sawed off shot gun. I unloaded them because I wanted to remove any opportunity that Mr. Stewart might have to do anything rash. I was a little concerned as to what he might do. [403]

2. In permitting said witness to testify as follows: Plamondon called me up and asked me to come down to his house. When I stepped on the porch at Mr. Plamondon's house the door was opened and as I stepped in he said, "Well Fred has done it." I said, "Did he shoot himself?" and he said, "No, he went in the river."

3. In permitting H. E. McKenney to testify, in substance, to the financial condition of Stewart's estate, as shown by the probate proceedings.

4. In permitting the witness George F. Plamondon to testify, in substance, that he told the bank examiner Hay that Stewart made away with himself.

At the time the testimony was offered as referred to in the preceding numbers, 1, 2, 3, and 4, defendant duly objected, an exception was taken and allowed.

5. In admitting and receiving in evidence plaintiff's Exhibit "20," being the affidavit of Maude E. Stewart concerning her so-called proof of death under the policy issued by the Mutual Life Insurance Company of New York, over the objection of defendant to which an exception, at the time, was allowed.

6. In admitting and receiving in evidence, over the objection of the defendant, Exhibit "21" to which objection an exception was allowed.

7. In admitting and receiving in evidence the letter of Sardam and the so-called proofs of death submitted by Mrs. Stewart regarding the policies issued by the Mutual Life Insurance Company of New York, all included in Plaintiff's Exhibit "18," to the offer of which defendant, at the time, objected, the objection being overruled and an exception was duly allowed.

8. In admitting and receiving in evidence the letter of March 13, 1921, by Sardam to the Mutual Life Insurance Company to which the defendant, at the time, objected, the objection being overruled and an exception was duly allowed.

9. In admitting and receiving in evidence Plaintiff's Exhibit "22," being the affidavit of Maude E. Stewart and her so-called proof of death under policies issued by the Mutual Life Insurance Company of New York to the introduction and reception of which, at the time defendant objected and the objection being overruled and an exception was duly allowed.

10. In admitting and receiving in evidence Plaintiff's Exhibit "23," the affidavit of Paul G. Shotswell, the offer of which was objected to, at the time, the objection being overruled and an exception was duly allowed.

11. In admitting and receiving in evidence Plaintiff's Exhibit "24," being the letter from Hayden, Langhorne & Metzger, concerning proof of death, to the offer of which defendant at the time objected, the objection being overruled and an exception was taken and duly allowed.

12. In admitting and receiving in evidence Plaintiff's Exhibit "25," being the letter of H. G. Fitch, to which defendant at the [404] time objected, the objection being overruled, and an exception was duly allowed.

13. In admitting and receiving in evidence the letter of F. J. Sardam, March 23, 1921, being Plaintiff's Exhibit "27," to the offer of which defendant at the time objected, the objection being overruled and an exception was duly allowed.

14. In admitting and receiving in evidence Plaintiff's Exhibit "28" being the original letter of April 18, 1921, by Sardam to the Prudential Insurance Company, and so-called certificates of proofs of death signed by Maude E. Stewart, to the offer and reception of which defendant, at the time objected, objection being overruled and an exception was duly allowed.

15. In admitting and receiving in evidence Plaintiff's Exhibit "29", being three affidavits signed by Maude E. Stewart and a letter from Fitch, dated May 13, 1921, to which offer the defendant at the time objected, the objection being overruled and an exception was duly allowed.

16. In admitting and receiving in evidence Plaintiff's Exhibit "30" being the original affidavit of Paul G. Shotswell, also letters of Hayden, Langhorne & Metzger, to which offer defendant at the time objected, the objection being overruled and an exception was duly allowed.

17. In admitting and receiving in evidence Plaintiff's Exhibit "31," letter of July 14, 1921,

written by Hayden, Langhorne & Metzger, to the offer of which defendant at the time objected, the objection being overruled and an exception was duly allowed.

18. In admitting and receiving in evidence, all written statements, memoranda and other papers, annexed to or made a part of all the foregoing instruments offered and received in evidence to all of which at the time defendant first duly objected, the objection being overruled and an exception was allowed in each instance.

19. In overruling the motion of defendant, at the close of the trial and after the reception of all testimony for the dismissal of said action upon the grounds, first, that there was no due or satisfactory proof of death presented to defendant on either of its policies prior to the commencement of the action, or at any time; second, that upon the whole case the evidence was insufficient to justify the conclusion that Frederick L. Stewart was dead, that the evidence in the case did show that Stewart is living, which motion was overruled and at the time an objection to said ruling was duly taken and an exception allowed.

20. The Court erred in its oral opinion at the close of the cause holding that Frederick L. Stewart was dead and in further holding that the plaintiff in the cause was entitled to judgment against the defendant.

21. The Court erred in making special Finding of Fact "X", to which finding defendant at the

time and in writing objected, the objection was overruled and an exception allowed.

22. The Court erred in making special Finding of Fact "XL" to which finding defendant at the time and in writing objected, the objection was overruled and an exception allowed. [405]

23. The Court erred in its special Conclusion of Law No. "II," which conclusion of law was objected to at the time by defendant, said objection was overruled and an exception duly allowed.

24. The Court erred in its special Conclusion of Law No. "III," which conclusion of law was objected to at the time by defendant, said objection was overruled and an exception duly allowed.

25. The Court erred in refusing to make Findings of Fact in favor of defendant as proposed by defendant at the time and prior to its making findings in this case, which proposed findings of fact are in writing numbered from one to six, which proposed findings of fact and each of them were, at the time, overruled by the Court and an exception duly allowed to defendant from the Court's ruling upon each of said proposed findings of fact.

26. The Court erred in failing to adopt the conclusion of law numbered one and two as proposed in writing by defendant prior to his making findings and conclusions in the case, which proposals were at the time overruled by the Court and an exception to such rulings being duly allowed.

27. The Court erred in signing and entering judgment in said cause against defendant in said case.

In each and every of said Assignments of Error, from one to twenty-seven inclusive, the objection to each ruling of the Court was made, at the time, an exception was duly taken and an exception allowed at the time of such ruling.

WHEREFORE, defendant prays that the judgment of said Court be reversed and that judgment be directed to be entered therein in favor of the defendant and against the plaintiff, for the dismissal of said cause and for its costs.

Dated at Tacoma, Washington, August 12, 1922.

S. A. KEENAN,

Attorney for Defendant Prudential Insurance Company of America.

Copy of within assignments of error received and due service of same acknowledged this 12th day of August, 1922.

H. J. FITCH,

HAYDEN, LANGHORNE & METZGER,

Attorneys for Plaintiff.

[Indorsed]: Aug. 12, 1922. [406]

No. 3436—No. 3437.

Assignments of Error.

Now comes The Mutual Life Insurance Company of New York one of the defendants in the above numbered and entitled causes and in connection with its petition for a writ of error in this cause, assigns the following errors which defendant avers occurred on the trial thereof, and upon which it

relies to reverse the judgment entered herein as appears of record:

1. In permitting the witness Claude P. Hay, the bank examiner, to testify, in substance, as follows: I closed the bank. I found arms, pistols and a sawed off shot gun. I unloaded them because I wanted to remove any opportunity that Mr. Stewart might have to do anything rash. I was a little concerned as to what he might do.

2. In permitting said witness to testify as follows: Plamondon called me up and asked me to come down to his house. When I stepped on the porch at Mr. Plamondon's house, the door was opened and as I stepped in he said, "Well, Fred has done it." I said, "Did he shoot himself?" and he said, "No, he went in the river." [407]

3. In permitting H. E. McKenney to testify, in substance, to the financial condition of Stewart's estate, as shown by the probate proceedings.

4. In permitting the witness George F. Plamondon to testify in substance, that he told the bank examiner Hay that Stewart made away with himself.

At the time the testimony was offered as referred to in the preceding numbers, 1, 2, 3 and 4, defendant duly objected an exception was taken and allowed.

5. In admitting and receiving in evidence Plaintiff's Exhibit "20," being the affidavit of Maude E. Stewart concerning her so-called proof of death under the policy issued by the Mutual Life Insurance Company of New York, over the objection of

defendant to which an exception, at the time, was allowed.

6. In admitting and receiving in evidence, over the objection of defendant, Exhibit "21" to which objection an exception was allowed.

7. In admitting and receiving in evidence the letter of Sardam and the so-called proofs of death submitted by Mrs. Stewart regarding the policies issued by the Mutual Life Insurance Company of New York, all included in Plaintiff's Exhibit "18" to the offer of which defendant, at the time, objected, the objection being overruled and an exception was duly allowed.

8. In admitting and receiving in evidence the letter of March 13, 1921, by Sardam to the Mutual Life Insurance Company to which the defendant, at the time, objected, the objection being overruled and an exception was duly allowed.

9. In admitting and receiving in evidence Plaintiff's Exhibit "22" being the affidavit of Maude E. Stewart and her so-called proof of death under policies issued by the Mutual Life Insurance Company of New York to the introduction and reception of which, at the time defendant objected and the objection being overruled and an exception was duly allowed.

10. In admitting and receiving in evidence Plaintiff's Exhibit "23" the affidavit of Paul G. Shotswell, the offer of which was objected to at the time, the objection being overruled and an exception was duly allowed.

11. In admitting and receiving in evidence Plaintiff's Exhibit "24" being the letter from Hayden, Langhorne & Metzger concerning proof of death, to the offer of which defendant at the time objected, the objection being overruled and an exception was taken and duly allowed. [408]

12. In admitting and receiving in evidence Plaintiff's Exhibit "25" being the letter of H. G. Fitch, to which defendant at the time objected, the objection being overruled and an exception was duly allowed.

13. In admitting and receiving in evidence the letter of F. J. Sardam, March 23, 1921, being Plaintiff's Exhibit "27" to the offer of which defendant at the time objected, the objection being overruled and an exception was duly allowed.

14. In admitting and receiving in evidence Plaintiff's Exhibit "28" being the original letter of April 18, 1921, by Sardam to the Prudential Insurance Company, and so-called certificates of proofs of death signed by Maude E. Stewart, to the offer and reception of which defendant, at the time objected, objection being overruled and an exception was duly allowed.

15. In admitting and receiving in evidence Plaintiff's Exhibit "29" being three affidavits signed by Maude E. Stewart and a letter from Fitch dated May 13, 1921, to which offer the defendant at the time objected, the objection being overruled and an exception was duly allowed.

16. In admitting and receiving in evidence Plaintiff's Exhibit "30" being the original affidavit of Paul G. Shotswell also letter of Hayden Lang-

horne & Metzger, to which offer defendant at the time objected, the objection being overruled and an exception was duly allowed.

17. In admitting and receiving in evidence Plaintiff's Exhibit "31," letter of July 14, 1921, written by Hayden, Langhorne & Metzger, to the offer of which defendant at the time objected, the objection being overruled and an exception was duly allowed.

18. In admitting and receiving in evidence, all written statements, memoranda and other papers, annexed to or made a part of all the foregoing instruments offered and received in evidence to all of which at the time defendant first duly objected, the objection being overruled and an exception was allowed in each instance.

19. In overruling the motion of defendant, at the close of the trial and after the reception of all testimony for the dismissal of said action upon the grounds, first, that there was no due or satisfactory proof of death presented to defendant on either of its policies prior to the commencement of the action, or at any time; second, that upon the whole case the evidence was insufficient to justify the conclusion that Frederick L. Stewart was dead, that the evidence in the case did show that Stewart is living, which motion was overruled and at the time an objection to said ruling was duly taken and an exception allowed.

20. The Court erred in its oral opinion at the close of the cause holding that Frederick L. Stewart was dead and in further holding that the plain-

tiff in the cause was entitled to judgment against the defendant. [409]

21. The Court erred in making special Finding of Fact VIII to which finding defendant at the time and in writing objected, the objection was overruled and an exception allowed.

22. The Court erred in making special Finding of Fact IX to which finding defendant at the time and in writing objected the objection was overruled and an exception allowed.

23. The Court erred in its special Conclusion of Law No. "II" which conclusion of law was objected to at the time by defendant, said objection was overruled and an exception duly allowed.

24. The Court erred in its special Conclusion of Law No. "III" which conclusion of law was objected to at the time by defendant, said objection was overruled and an exception duly allowed.

25. The Court erred in refusing to make Findings of Fact in favor of defendant as proposed by defendant at the time and prior to its making findings in this case, which proposed findings of fact are in writing numbered from one to six, which proposed findings of fact and each of them were, at the time, overruled by the Court and an exception duly allowed to defendant from the Court's ruling upon each of said proposed findings of fact.

26. The Court erred in failing to adopt the conclusion of law numbered one and two as proposed in writing by defendant prior to his making findings and conclusions in the case, which proposals

were at the time overruled by the Court and an exception to such rulings being duly allowed.

27. The Court erred in signing and entering judgment in said cause against defendant in said case.

In each and every of said Assignments of Error, from one to twenty-seven inclusive, the objection to each ruling of the Court was made, at the time, an exception was duly taken and an exception allowed at the time of such ruling.

WHEREFORE, defendant prays that the judgment of said Court be reversed and that the judgment be directed to be entered therein in favor of the defendant and against the plaintiff for the dismissal of said cause and for its costs.

Dated at Tacoma, Washington, August 12th, 1922.

CHADWICK, McMICEN, RAMSEY &
RUPP,

Attorneys for Defendant.

Copy of within assignments of error received and due service of same acknowledged this 12th day of August, 1922.

H. J. FITCH,
HAYDEN, LANGHORNE & METZGER,

Attorneys for Plaintiff. [410]

[Indorsed]: Aug. 12, 1922. [411]

No. 3436.

Petition for Order Allowing Writ of Error.

The said defendant, Prudential Insurance Company of America, a corporation, feeling itself ag-

grieved by the judgment entered in said cause on the 24th day of April, 1922, in favor of said plaintiff and against said defendant for the sum of thirty-five thousand dollars (\$35,000), together with interest thereon at the rate of six per cent per annum from the 12th day of June, 1921, and said plaintiff's costs and disbursements, in which judgment, and the proceedings leading up to the same, certain errors were committed to the prejudice of said defendant, which more fully appear from the assignment if errors which is filed herewith, comes now and prays said Court for an order allowing the said defendant to prosecute a writ of error to the Honorable United States Circuit Court of Appeals for the Ninth Circuit for the correction of the errors complained of, under and according to the laws of the United States in that behalf made and provided, and also prays that an order be made fixing the amount of security which the said defendant shall give upon said writ of error, and that upon the furnishing of said security all further proceedings in this cause be suspended and stayed until the determination of [412] said writ of error by said Circuit Court of Appeals for the Ninth Circuit. And further prays that a transcript of the record, proceedings and papers in this cause, duly authenticated, may be sent to the said Circuit Court of Appeals, and your petitioner will ever pray.

Dated this 12th day of August, 1922.

S. A. KEENAN,
Attorney for Defendant.

Copy of within petition for order allowing writ of error received, and due service of same acknowledged this 12th day of August, A. D. 1922.

H. J. FITCH,

HAYDEN, LANGHORNE & METZGER,

Attorneys for Plaintiff.

[Indorsed]: Aug. 12, 1922. [413]

No. 3437.

Petition for Order Allowing Writ of Error.

The said defendant, The Mutual Life Insurance Company of New York, a corporation, feeling itself aggrieved by the judgment entered in said cause on the 24th day of April, 1922, in favor of said plaintiff and against said defendant for the sum of Ten Thousand Dollars (\$10,000), together with interest thereon at the rate of six per cent per annum from the 12th day of June, 1921, and said plaintiff's costs and disbursements, in which judgment, and the proceedings leading up to the same, certain errors were committed to the prejudice of said defendant, which more fully appear from the assignment of errors which is filed herewith, comes now and prays said Court for an order allowing the said defendant to prosecute a writ of error to the Honorable United States Circuit Court of Appeals for the Ninth Circuit for the correction of the errors complained of, under and according to the laws of the United States in that behalf made and provided, and also prays that an

order be made fixing the amount of security which the said defendant shall give upon said writ of error, and that upon the furnishing of said security all further proceedings in this cause be suspended and stayed until the determination of said writ of error by said Circuit Court of Appeals for the [414] Ninth Circuit. And further prays that a transcript of the record, proceedings and papers in this cause, duly authenticated, may be sent to the said Circuit Court of Appeals, and your petitioner will ever pray.

Dated this 12th day of August, 1922.

CHADWICK, McMICKEN,

RAMSEY & RUPP,

Attorneys for Defendant.

Copy of within petition for order allowing writ of error received, and due service of same acknowledged this 12th day of August, A. D. 1922.

H. J. FITCH,

HAYDEN, LANGHORNE & METZGER,

Attorneys for Plaintiff.

[Indorsed]: Aug. 12, 1922. [415]

No. 3436.

Order Granting Writ of Error and Fixing Amount of Bond.

This cause coming on this day to be heard in the courtroom of said court in the city of Tacoma, Washington, upon the petition of the defendant, Prudential Insurance Company of America, a cor-

poration, herein filed, praying the allowance of a writ of error to the United States Circuit Court of Appeals for the Ninth Circuit, together with the assignment of errors also herein filed, in due time, and also praying that a transcript of the record and proceedings and papers upon which the judgment herein was rendered, duly authenticated, may be sent to the said United States Circuit Court of Appeals for the Ninth Circuit, and that such other and further proceedings may be had as may be proper in the premises.

The Court having duly considered the same does hereby allow the said writ of error prayed for, and it is ORDERED that the amount of bond to be given by said defendant be and the same hereby is fixed in the sum of Forty [416] Thousand (\$40,000) Dollars.

Dated this 12th day of August, 1922.

EDWARD E. CUSHMAN,

Judge.

Copy of the foregoing order received and service of same acknowledged this 12th day of August, A. D. 1922.

H. G. FITCH,

HAYDEN, LANGHORNE & METZGER,

Attorneys for Plaintiff.

[Indorsed]: Aug. 12, 1922. [417]

No. 3437.

Order Granting Writ of Error and Fixing Amount of Bond.

This cause coming on this day to be heard in the courtroom of said court in the city of Tacoma, Washington, upon the petition of the defendant, The Mutual Life Insurance Company of New York, a corporation, herein filed, praying the allowance of a writ of error to the United States Circuit Court of Appeals for the Ninth Circuit, together with the assignment of errors, also herein filed, in due time, and also praying that a transcript of the record and proceedings and papers upon which the judgment herein was rendered, duly authenticated, may be sent to the said United States Circuit Court of Appeals for the Ninth Circuit, and that such other and further proceedings may be had as may be proper in the premises.

The Court having duly considered the same does hereby allow the said writ of error prayed for, and it is ORDERED that the amount of bond to be given by said defendant [418] be and the same hereby is fixed in the sum of Thirteen Thousand and no/100 Dollars.

Dated this 12th day of August, 1922.

EDWARD E. CUSHMAN,
Judge.

Copy of the foregoing order received and service of same acknowledged this 12th day of August, 1922.

H. G. FITCH,
HAYDEN, LANGHORNE & METZGER,
Attorneys for Plaintiff.

[Indorsed]: Aug. 12, 1922. [419]

No. 3436.

Bond on Writ of Error.

KNOW ALL MEN BY THESE PRESENTS, That we, Prudential Insurance Company of America, a corporation, the above-named defendant, as principal, and American Surety Company of New York, a body corporate duly incorporated under the laws of the State of New York and authorized to transact the business of surety in the State of Washington, as surety, are held and firmly bound unto Maude E. Stewart, the above-named plaintiff, in the sum of Forty Thousand and no/100 Dollars, to be paid to said plaintiff, her executors, administrators and assigns, for which payment, well and truly to be made, we bind ourselves, our and each of our successors and assigns, jointly and severally by these presents.

Sealed with our seals and dated this 12th day of August, 1922.

The condition of the above obligation is such that whereas in the above court and cause, final judgment was rendered against the said defendant

and in favor of said plaintiff, in the sum of thirty-five thousand dollars (\$35,000) together with interest thereon at the rate of six per cent per annum from the 12th day of June, 1921, and said plaintiff's [420] costs and disbursements; and

WHEREAS, the said defendant has obtained from said Court a writ of error to reverse the judgment in said action, and a citation directed to the plaintiff is about to be issued citing and admonishing her to be and appear in the United States Circuit Court of Appeals, for the Ninth Circuit, to be held at San Francisco, in the State of California;

NOW, THEREFORE, if the said defendant, Prudential Insurance Company of America, a corporation, shall prosecute the said writ of error to effect, and shall answer all damages and costs that may be awarded against it if it fails to make its plea good, then the above obligation to be void; otherwise to remain in full force and effect.

PRUDENTIAL INSURANCE COMPANY
OF AMERICA. (Seal)

[Seal] By S. A. KEENAN,
Its Attorney.

AMERICAN SURETY COMPANY OF
NEW YORK.

By S. H. MELROSE,
Resident Vice-president.
[Seal] Attest: B. L. WILEY,
Resident Assistant Secretary.

The sufficiency of the surety on the foregoing bond approved by me this 12th day of August, 1922.

EDWARD E. CUSHMAN,
Judge of Said Court. [421]

Copy of foregoing bond received and service of same acknowledged this 12th day of August, 1922.

H. G. FITCH,
HAYDEN, LANGHORNE & METZGER,
Attorneys for Plaintiff.

[Indorsed]: Aug. 12, 1922. [422]

No. 3437.

Bond on Writ of Error.

KNOW ALL MEN BY THESE PRESENTS, that we, the Mutual Life Insurance Company of New York, a corporation, the above-named defendant, as principal, and United States Fidelity and Guaranty Co., a body corporate, duly incorporated under the laws of the State of Maryland, and authorized to transact the business of surety in the State of Washington, as surety, are held and firmly bound unto Maude E. Stewart, the above-named plaintiff, in the sum of Thirteen Thousand and no/100 Dollars to be paid to said plaintiff, her executors, administrators and assigns, for which payment, well and truly to be made, we bind ourselves, our and each of our successors and assigns, jointly and severally by these presents.

Sealed with our seals and dated this 12th day of August, 1922.

The condition of the above obligation is such that whereas in the above court and cause, final judgment was rendered against the said defendant and in favor of said plaintiff, in the sum of Ten Thou-

sand Dollars (\$10,000), [423] together with interest thereon at the rate of six per cent per annum from the 12th day of June, 1921, and said plaintiff's costs and disbursements; and

WHEREAS, the said defendant has obtained from said court a writ of error to reverse the judgment in said action, and a citation directed to the plaintiff is about to be issued citing and admonishing her to be and appear in the United States Circuit Court of Appeals, for the Ninth Circuit, to be held at San Francisco, in the State of California;

NOW, THEREFORE, if the said defendant, The Mutual Life Insurance Company of New York, a corporation, shall prosecute the said writ of error to effect, and shall answer all damages and costs that may be awarded against it if it fails to make its plea good, then the above obligation to be void; otherwise to remain in full force and effect.

THE MUTUAL LIFE INSURANCE COMPANY OF NEW YORK. (Seal)

By W. A. M. SMITH,

Its Agent.

By CHADWICK, McMICKEN, RAMSEY & RUPP,

Its Attorneys.

UNITED STATES FIDELITY AND GUARANTY CO.

[Seal] By JOHN C. McCOLLISTER,

Attorney in Fact.

The sufficiency of the surety on the foregoing bond approved by me this 12th day of August, 1922.

EDWARD E. CUSHMAN,
Judge of Said Court. [424]

Copy of the within bond received, and due service of same acknowledged this 12th day of August, 1922.

H. G. FITCH,
HAYDEN, LANGHORNE & METZGER,
Attorneys for Plaintiff.
[Indorsed]: Aug. 12, 1922. [425]

Writ of Error.

UNITED STATES OF AMERICA,—ss.

The President of the United States of America to the Judges of the District Court of the United States for the Western District of Washington, Southern Division, GREETING:

Because in the record and proceedings, as also in the rendition of the judgment of the plea which is in the said District Court before you, or some of you, between Maude E. Stewart, plaintiff, and Prudential Insurance Company of America, a corporation, defendant, a manifest error hath happened, to the great damage of the said Prudential Insurance Company of America, a corporation, defendant, as is said and appears by the complaint, we being willing that such error, if any hath been, should be duly corrected and full and speedy justice done to the party aforesaid, in this behalf, do command you, if any judgment be therein given, that

then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Justice of the United States Circuit Court of Appeals for the Ninth Circuit, at the courtrooms of said court in the City of San Francisco, in the State of California, together with this writ, so that you have the same at the said place before the justice aforesaid, on the 6th day of September, 1922, that the record and proceedings aforesaid being inspected the said justice of the said Circuit Court of Appeals may cause further to be done therein to correct that error, what of right and according [426] to the law and custom of the United States ought to be done.

WITNESS, the Honorable WILLIAM H. TAFT, Chief Justice of the Supreme Court of the United States, this 12th day of August, in the year of our Lord one thousand nine hundred and twenty-two, and of the Independence of the United States the one hundred and forty-seventh.

[Seal] F. M. HARSHBERGER,
Clerk of said District Court of the United States,
for the Western District of Washington.

By Alice Huggins,
Deputy.

The foregoing writ is hereby allowed.

EDWARD E. CUSHMAN,
United States District Judge, for the Western
District of Washington.

Copy of within writ of error received, and due service of same acknowledged this 12th day of August, 1922.

H. G. FITCH,
HAYDEN, LANGHORNE & METZGER,
Attorneys for Plaintiff.

Received copy of the foregoing writ of error lodged with me for defendant in error this 12th day of August, 1922.

F. M. HARSHBERGER,
Clerk of said United States District Court.
By Alice Huggins,
Deputy.

[Indorsed]: Aug. 12, 1922. [427]

Writ of Error.

UNITED STATES OF AMERICA,—ss.

The President of the United States of America to the Judges of the District Court of the United States for the Western District of Washington, Southern Division, GREETING:

Because in the record and proceedings, as also in the rendition of the judgment of the plea which is in the said District Court before you, or some of you, between Maude E. Stewart, plaintiff, and The Mutual Life Insurance Company of New York, a corporation, defendant, a manifest error hath happened, to the great damage of the said The Mutual Life Insurance Company of New York, a corporation, defendant, as is said and appears by

the complaint, we being willing that such error, if any hath been, should be duly corrected and full and speedy justice done to the party aforesaid, in this behalf, do command you, if any judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Justice of the United States Circuit Court of Appeals for the Ninth Circuit, at the courtrooms of said court in the City of San Francisco, in the State of California, together with this writ, so that you have the same at the said place before the justice aforesaid, on the 9th day of September, 1922, that the record and proceedings aforesaid being inspected the said justice of the said Circuit Court of Appeals may cause further to be done therein to correct that error, what of right and according [428] to the law and custom of the United States ought to be done.

WITNESS, the Honorable WILLIAM H. TAFT, Chief Justice of the Supreme Court of the United States, this 12th day of August, in the year of our Lord one thousand nine hundred and twenty-two, and of the Independence of the United States the one hundred and forty-seventh.

[Seal] F. M. HARSHBERGER,
Clerk of said District Court of the United States,
for the Western District of Washington.

By Alice Huggins,
Deputy.

The foregoing writ is hereby allowed.

EDWARD E. CUSHMAN,
United States District Judge for the Western Dis-
trict of Washington.

Received copy of the foregoing writ of error
lodged with me for defendant in error this 12th
day of August, 1922.

F. M. HARSHBERGER,
Clerk of said United States District Court.

By Alice Huggins,
Deputy.

Copy of within writ of error received, and due
service of same acknowledged this 12th day of
August, 1922.

H. G. FITCH,
HAYDEN, LANGHORNE & METZGER,
Attorneys for Plaintiff.

[Indorsed]: Aug. 12, 1922. [429]

No. 3436.

Citation (On Writ of Error).

UNITED STATES OF AMERICA,—ss.

To Maude E. Stewart, GREETING:

You are hereby cited and admonished to be and
appear at a term of the United States Circuit
Court of Appeals, for the Ninth Circuit, to be
holden in the city of San Francisco, State of Cali-
fornia, on the 6th day of September, 1922, pur-
suant to a writ of error filed in the Clerk's office

of the District Court of the United States, for the Western District of Washington, Southern Division, wherein, Prudential Insurance Company of America, a corporation, is plaintiff in error, and you are defendant in error, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected, and speedy justice should not be done to the parties in that behalf.

Dated the 12th day of August, 1922.

EDWARD E. CUSHMAN,
United States District Judge for the Western District of Washington.

[Seal] Attest: F. M. HARSHBERGER,
Clerk of said United States District Court for the Western District of Washington.

By Alice Huggins,
Deputy. [430]

We hereby, this 12th day of August, 1922, acknowledge service of the foregoing citation at the city of Tacoma, Washington.

H. G. FITCH,
HAYDEN, LANGHORNE & METZGER,
Attorneys for Said Maude E. Stewart.

Received copy of the foregoing citation lodged with me for defendant in error this 12th day of August, 1922.

F. M. HARSHBERGER,
Clerk of said United States District Court.

By Alice Huggins,
Deputy.

[Indorsed]: Aug. 12, 1922. [431]

No. 3437.

Citation (On Writ of Error).

UNITED STATES OF AMERICA,—ss.

To Maude E. Stewart, GREETING:

You are hereby cited and admonished to be and appear at a term of the United States Circuit Court of Appeals, for the Ninth Circuit, to be holden in the city of San Francisco, State of California, on the 9th day of September, 1922, pursuant to a writ of error filed in the clerk's office of the District Court of the United States, for the Western District of Washington, Southern Division, wherein The Mutual Life Insurance Company of New York, a corporation, is plaintiff in error, and you are defendant in error, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected, and speedy justice should not be done to the parties in that behalf.

Dated the 12th day of August, 1922.

EDWARD E. CUSHMAN,

United States District Judge for the Western District of Washington.

[Seal] Attest: F. M. HARSHBERGER,

Clerk of said United States District Court for the Western District of Washington.

By Alice Huggins,

Deputy. [432]

We hereby, this 12th day of August, 1922, acknowledge service of the foregoing citation at the city of Tacoma, Washington.

H. G. FITCH,
HAYDEN, LANGHORNE & METZGER,
Attorneys for Said Maude E. Stewart.

Received copy of the foregoing citation lodged with me for defendant in error this 12th day of August, 1922.

F. M. HARSHBERGER,
Clerk of said United States District Court.
By Alice Huggins,
Deputy.

[Indorsed]: Aug. 12, 1922. [433]

No. 3436—No. 3437.

Stipulation for Consolidated Return to Writs of Error.

WHEREAS the above-entitled actions were consolidated for trial in the above-named court, and it was stipulated between the parties that the testimony adduced by either party to each of said actions should be applicable to both actions and that there should be one bill of exceptions for both actions; and

WHEREAS separate judgments were entered against the defendants in each of said actions, and the said defendants have deemed it necessary to take separate writs of error,

NOW, THEREFORE, to facilitate the preparation of the return to said writs and to expedite the hearing of said actions, it is hereby agreed that the clerk of said court [434] shall certify and transmit one consolidated record as his return to said writs of error in said actions.

Dated this 12th day of August, 1922.

H. G. FITCH,
HAYDEN, LANGHORNE & METZGER,
Attorneys for Plaintiff.

S. A. KEENAN,
Attorney for Defendant, Prudential Insurance
Company of America.

CHADWICK, McMICKEN, RAMSEY &
RUPP,
Attorneys for Defendant, The Mutual Life Insurance
Company of New York.

[Indorsed]: Aug. 12, 1922. [435]

No. 3436—No. 3437.

Stipulation for Transmission of Original Exhibits.

In order to save expense, and because of the difficulty in obtaining a satisfactory copy of many of the original exhibits in the above-entitled causes.

IT IS HEREBY STIPULATED between the undersigned attorneys for the parties in said causes that none of the original exhibits on file with the Clerk, except Plaintiff's Exhibits 16 [436] and 17, need to be copied in the Transcript of Record, but that all such original exhibits shall

be transmitted to the Clerk of the United States Circuit Court of Appeals for the Ninth Circuit.

Dated this 14th day of June, 1922.

H. G. FITCH and
HAYDEN, LANGHORNE & METZGER,
Attorneys for Plaintiff.
CHADWICK, McMICKEN, RAMSEY &
RUPP,

S. A. KEENAN,
Attorneys for Defendants.

[Indorsed]: Jun. 14, 1922. [437]

No. 3436—No. 3437.

Order for Transmission of Original Exhibits.

Agreeably to the written stipulation of the parties this day filed herein, and it being in the opinion of the presiding Judge, undersigned, deemed proper,

IT IS HEREBY ORDERED that none of the original exhibits except Plaintiff's Exhibit 16 and 17 need be copied in the transcript of record, but that all the original exhibits mentioned in said stipulation shall be forwarded by the Clerk of this court to the Clerk of the United States Circuit Court of Appeals for the Ninth Circuit.

Done in open court this 14th day of June, 1922.

EDWARD E. CUSHMAN,
United States District Judge. [438]

[Indorsed]: Jun. 14, 1922. [439]

No. 3436—No. 3437.

Stipulation as to Transcript of Record.

It is hereby stipulated between the parties hereto that the clerk of this court in making up his consolidated return to the writs of error in said actions shall include therein the following:

Complaint in No. 3436.

Amendment to Complaint in No. 3436.

Answer in No. 3436.

Complaint in No. 3437.

Answer in No. 3437.

Stipulation for Consolidation in No. 3436.

Stipulation for Consolidation in No. 3437.

Order of Consolidation in No. 3436.

Order of Consolidation in No. 3437.

Notice to produce.

Opinion of the Court in consolidated causes.

Findings of fact and conclusions of Law proposed by defendant in No. 3436 and order refusing same [440] and allowing exceptions.

Findings of fact and conclusions of law proposed by defendant in No. 3437 and order refusing same and allowing exceptions.

Findings of fact and conclusions of law entered by the court in No. 3436.

Findings of fact and conclusions of law entered by the court in No. 3437.

Exceptions of Defendant to findings of fact and conclusions of law in No. 3436 and order allowing exceptions.

Exceptions of defendant to findings of fact and conclusions of law in No. 3437 and order allowing exceptions.

Judgment entered in No. 3436.

Judgment entered in No. 3437.

Stipulation and order in consolidated causes extending time for bill of exceptions to May 26, 1922.

Stipulation extending time for bill of exceptions in consolidated causes to June 14, 1922.

Order extending time for bill of exceptions in consolidated causes, to June 14, 1922.

Motion of Defendants for settlement of bill of exceptions in consolidated causes, with affidavits of Otto B. Rupp and J. E. Peterson attached.

Affidavit of Otto B. Rupp (second affidavit) in *re* bill of exceptions.

Affidavit of H. G. Fitch in *re* bill of exceptions.

Bill of exceptions in consolidated causes.

Assignment of errors in No. 3436.

Assignment of errors in No. 3437. [441]

Petition for order allowing writ of error in No. 3436. ..

Petition for order allowing writ of error in No. 3437.

Order granting writ of error and fixing bond in 3436.

Order granting writ of error and fixing bond in 3437.

Bond in 3436.

Bond in No. 3437.

Writ of error in No. 3436.

Writ of error in No. 3437.

Citation in No. 3436.

Citation in No. 3437.

Stipulation for consolidated return to writs of error.

Stipulation for transmission of original exhibits.

Order for transmission of original exhibits.

This stipulation as to record.

Agreeably to the order of said Court heretofore entered in said consolidated causes, it is further stipulated between the parties that all of the original exhibits on file in said causes be detached from the bill of exceptions therein and transmitted by the Clerk of said court to said United States Circuit Court of Appeals for the Ninth Circuit as a part of his return to said writs of error, which exhibits are as follows:

PLAINTIFF'S EXHIBITS.

Exhibit 1. Envelope containing deed from Stewart to McKenney.

Exhibit 2. Envelope containing deed from Stewart and wife to Al. Maurer, also letter.

Exhibit 3. Statement from Speedwell Garage Company, Portland.

Exhibit 4. Prudential Insurance Policy No. 2023685.

Exhibit 5. Prudential Insurance Policy No. 2230026.

Exhibit 6. Prudential Insurance Policy No. 2371527. [442]

Exhibit 7. Mutual Life Policy No. 2244868.

Exhibit 8. Mutual Life Policy No. 2242058.

Exhibit 9. Picture of Ferry-boat "Queen."

Exhibit 10. Picture of Ferry-boat "Queen" at dock.

Exhibit 11. Picture of Ferry-boat "Queen" and dock.

Exhibit 12. Picture of Ferry-boat "Queen" alongside of "Elf."

Exhibit 13. Picture of Ferry-boat "Queen."

Exhibit 14. Picture of Ferry-boat "Queen" at dock.

Exhibit 15. Carbon copy of a letter dated March 14, 1921, to Claude P. Hay and written report on bank annexed.

Exhibit 16. Statement or letter written March 17, 1921, from Stewart to wife.

Exhibit 17. Typewritten statement or letter from Stewart to wife dated March 15, 1921.

Exhibit 18. Letter from Sardam to Mutual Life, dated April 9, 1921, with statement pertaining to proof of death.

Exhibit 19. Letter from Sardam dated March 23, 1921, to Mutual Life.

Exhibit 20. Letter from Prudential Insurance Company to Sardam.

Exhibit 21. Affidavit of Mrs. Stewart dated May 9, 1921.

Exhibit 22. Affidavit of Mrs. Stewart dated May 9, 1921.

Exhibit 23. Shotswell's affidavit.

Exhibit 24. Letter dated July 13, 1921, from Hayden, Langhorne & Metzger to Mutual Life Ins. Co.

- Exhibit 25. Letter dated May 13, 1921, from Fitch to Mutual Life Insurance Company.
- Exhibit 26. Letter dated May 13, 1921, from Fitch to Mutual Life Insurance Company.
- Exhibit 27. Letter from Sardam to Prudential Insurance Company dated March 23, 1921.
- Exhibit 28. Letter dated April 18, 1921, from Sardam to Prudential Insurance Company and claimant's statement on the Company's printed form. [443]
- Exhibit 29. Letter dated May 13, 1921, from Fitch to Prudential Insurance Company with affidavit of Mrs. Stewart and letter dated May 13, 1921, from Fitch to Prudential Insurance Company with affidavit of Mr. Stewart. Letter dated May 13, 1921, from Fitch to Prudential Ins Co.
- Exhibit 30. Affidavit of Paul Shotswell with letter from Hayden, Langhorne & Metzger to Prudential Insurance Company dated July 13, 1921.
- Exhibit 31. Letter from Hayden, Langhorne & Metzger dated July 14, 1921, to Prudential Insurance Company.
- Exhibit 32. Transcript of Walter Comber's conviction.
- Exhibit 33. Affidavit of George Elwood.
- Exhibits 34 and 35. (2 volumes) Registers of guests of Mr. Rainier Park.
- Exhibit 36. Picture of Stewart, his father and a boy.

DEFENDANTS' EXHIBITS:

- Exhibit "A." Letter from Mrs. Stewart to Stevens.

Exhibit "B." Picture of Ferry-boat "Queen."

Exhibit "C." Picture of Ferry-boat "Queen."

Exhibit "D." Rough sketch made on stand by Captain Reid.

Exhibit "E." Photograph of Stewart.

Exhibit "F." Photograph of Hanford Street scene.

Exhibit "G." Photograph of Hanford Street scene.

Exhibit "H." Photograph "C" referred to in Hanford depositions.

Exhibit "I." Photograph "D" referred to in Hanford depositions.

Exhibit "J." Photograph "E" referred to in Hanford depositions.

Exhibit "K." Photograph "F" referred to in Hanford depositions.

Exhibit "L." Photograph "G" referred to in Hanford depositions.

Exhibit "M." Photograph "H" referred to in Hanford depositions.

Exhibit "N." Photograph "I" referred to in Hanford depositions. [444]

Exhibit "O." Two pages from Hanford Hotel Register.

Exhibit "P." Bank check "K" referred to in Hanford depositions, dated February 14, 1922, signed by George Hedges payable to George Elwood.

Exhibit "Q." Photograph "A" referred to in Pooley deposition.

Exhibit "R." Photograph referred to in Pooley deposition.

Exhibit "S." Telegram from Sardam to Langhorne.

Exhibit "T." Photograph "I" referred to in Onorato deposition.

Exhibit "U." Plat of dock street, etc., at Kalama.

Exhibit "V." Photograph referred to in Comber deposition.

Exhibit "W." Photograph referred to in Comber deposition.

Exhibit "X." Photograph of boats "log."

Exhibit "Y." Diagram of Ferry-boat "Queen's" deck.

Exhibit "Z."—Photograph.

It is further stipulated between the parties hereto that the foregoing compromise all the papers, exhibits, testimony and proceedings which are necessary to the hearing of said consolidated causes upon such writs of error in the United States Circuit Court of Appeals for the Ninth Circuit, and that no other papers or proceedings than those above mentioned need be included by the Clerk of said Court in making up his return to said writs of error as a part of such record.

Dated: August, 1922.

H. G. FITCH,
HAYDEN, LANGHORNE & METZGER,
Attorneys for Plaintiffs.

S. A. KEENAN,
Attorney for The Prudential Insurance Company
of America.

CHADWICK, McMICKEN, RAMSEY &
RUPP,
Attorneys for Defendant The Mutual Insurance
Company of New York. [445]
[Indorsed]: Aug. 15, 1922. [446]

No. 3436—No. 3437.

Stipulation Re Printing Transcript of Record.

It is hereby stipulated and agreed by the parties to the above-entitled causes, through their respective counsel, that the consolidated printed transcript therein consists of the following, it being deemed by all parties that the same comprises all parts of the record in anywise material to the consideration of said causes in the Circuit Court of Appeals in reviewing said causes on the writs of error sued out therein, to wit;

1. Plaintiff's complaint in No. 3436, omitting therefrom the exhibits designated therein as "A," "B," and "C," being the three policies of insurance sued on, excepting the first page, in full, of each of said policies of insurance. It being agreed by all parties to these ac-

tions that the first page of the respective policies of insurance is the only part of the policy in anywise involved in this litigation.
[447]

2. Amendment to complaint in No. 3436.
3. Defendant's answer in No. 3436.
4. Plaintiff's complaint in No. 3437, omitting therefrom the exhibits designated therein as "A" and "B," being the two policies of insurance sued on, excepting the first page, in full, of each of said policies of insurance. It being agreed by all parties to these actions that the first page of the respective policies of insurance is the only part of the policy in anywise involved in this litigation.
5. Defendant's answer in No. 3437.
6. Notice to produce.
7. Stipulation for consolidation in No. 3436.
8. Stipulation for consolidation in No. 3437.
9. Order of consolidation in No. 3436.
10. Order of consolidation in No. 3437.
11. Opinion of the Court in consolidated causes.
12. Findings of fact and conclusions of law proposed by defendant in No. 3436, and order refusing same and allowing exceptions.
13. Findings of fact and conclusions of law proposed by defendant in No. 3437, and order refusing same and allowing exceptions.
14. Findings of fact and conclusions of law entered by the Court in No. 3436.
15. Findings of fact and conclusions of law entered by the Court in No. 3437.

16. Exceptions of defendant to findings of fact and conclusions of law in No. 3436, and order allowing exceptions.
17. Exceptions of defendant to findings of fact and conclusions of law in No. 3437, and order allowing exceptions.
18. Judgment entered in No. 3436.
19. Judgment entered in No. 3437.
20. Stipulation and order in consolidated causes extending time to file bill of exceptions to May 26, 1922.
21. Stipulation extending time for preparation of bill of exceptions in consolidated causes to June 14, 1922.
22. Order extending time for bill of exceptions in consolidated causes to June 14, 1922. [448]
23. Motion of defendants for settlement of bill of exceptions in consolidated causes, with affidavit of Otto B. Rupp and J. E. Peterson attached.
24. Affidavit of Otto B. Rupp (second affidavit) *in re* bill of exceptions.
25. Affidavit of H. G. Fitch *in re* bill of exception
26. Bill of exceptions in consolidated causes, excepting all exhibits attached thereto, the number of said exhibits to be included in the printed record, as hereinafter specifically set out.
27. Assignment of errors in No. 3436.
28. Assignment of errors in No. 3437.
29. Petition for allowing writ of error in No. 3436.

30. Petition for allowing writ of error in No. 3437.
31. Order granting writ of error and fixing bond in No. 3436.
32. Order granting writ of error and fixing bond in No. 3437.
33. Bond in No. 3436.
34. Bond in No. 3437.
35. Writ of error in No. 3436.
36. Writ of error in No. 3437.
37. Citation in No. 3436.
38. Citation in No. 3437.
39. Stipulation for consolidated return to writs of error.
40. Stipulation for transmission of original exhibits.
41. Order for transmission of original exhibits.
42. Stipulation as to record.

And the following exhibits:

PLAINTIFF'S EXHIBITS:

43. Exhibit 1. Envelope containing deed from Stewart to McKenney.
44. Exhibit 2. Envelope and letter. (Immediately following the letter print this:) Accompanying said letter was a deed acknowledged ———, 1921, from Stewart and wife to Al. Maurer, conveying one-quarter interest in "the farm" as described in McKenney's testimony. [449]
45. Exhibit 3. Statement from Speedwell Garage Company. Portland.
46. Exhibit 4. First page only of Prudential Insurance Policy No. 2023685.

47. Exhibit 5. First page only of Prudential Insurance Policy No. 2230026.
48. Exhibit 6. First page only of Prudential Insurance Policy No. 2371527.
49. Exhibit 7. First page only of Mutual Life Policy No. 2244868.
50. Exhibit 8. First page only of Mutual Life Policy No. 2242058.
51. Exhibit 9. Picture of Ferry-boat "Queen."
52. Exhibit 11. Picture of Ferry-boat "Queen" and dock.
53. Exhibit 12. Picture of Ferry-boat "Queen" alongside "Elf."
54. Exhibit 15. Carbon copy of letter dated March 14, 1921, to Claude P. Hay and written report on bank annexed.
55. Exhibit 16. Statement or letter written March 17, 1921 from Stewart to wife.
56. Exhibit 17. Typewritten statement or letter from Stewart to wife, dated March 15, 1921.
57. Exhibit 18. Letter from Sardam to Mutual Life, dated April 9, 1921, with statement pertaining to proof of death.
58. Exhibit 19. Letter from Sardam to Mutual Life, dated March 23, 1921.
59. Exhibit 20. Letter from Prudential Insurance Company to Sardam.
60. Exhibit 21. Affidavit of Mrs. Stewart, dated May 9, 1921. (Immediately following this affidavit print this:) It is admitted by all parties that a similar affidavit was forwarded, at the same time, to the Prudential

Insurance Company for each of its three policies involved in this suit and that policy was referred to and described therein. It is also admitted by all parties that a similar affidavit, at the same time, was forwarded to the Mutual Life Insurance Company for each of its two policies involved in this suit and that policy was referred to and described therein, and this affidavit need be printed but once. [450]

61. Exhibit 23. Shotswell's Affidavit. (Immediately following this affidavit print:) It is admitted by all parties that this affidavit was forwarded to and received by each of the Insurance Companies, and need be printed but once.
62. Exhibit 24. Letter dated July 13, 1921, from Hayden, Langhorne & Metzger to Mutual Life Insurance Company. (Immediately following this letter print:) It is admitted that the same letter was forwarded to and received by the Prudential Insurance Company, and need be printed but once.
63. Exhibit 27. Letter from Sardam to Prudential Insurance Company dated March 23, 1921.
64. Exhibit 28. Letter dated April 18, 1921, from Sardam to Prudential Insurance Company and claimant's statement on Company's printed form.
65. Exhibit 29. Letter dated May 13, 1921, from Fitch to Prudential Insurance Company.

(Immediately following this letter print:)
It is admitted that a similar letter was forwarded to the Prudential Insurance Company for each of its three insurance policies, and need be printed but once.

66. Exhibit 31. Letter from Hayden, Langhorne & Metzger, dated July 14, 1921, to Prudential Insurance Company.
67. Exhibit 32. Transcript of Walter Comber's conviction.
68. Exhibit 33. Affidavit of George Elwood.
69. Exhibits 34 and 35 are two large volumes of registered guests entering Mt. Rainier Park. It is stipulated that they need not be printed in this record, and it is further admitted, by all parties hereto, that neither the name nor signature of Frederick L. Stewart, in any form, appears therein.
70. Exhibit 36. Picture of Stewart, his father and a boy.

DEFENDANTS' EXHIBITS:

71. Exhibit "A." Letter from Mrs. Stewart to Stevens.
72. Exhibit "E." Photograph of Stewart.
73. Exhibit "F." Picture of barber-shop, Hanford.
74. Exhibit "H." Photograph of Stewart annexed to Hanford Depositions.
75. Exhibit "I." Photograph of Stewart referred to in Hanford Depositions. It is admitted by all parties that exhibits "H" and "I" [451] are the same photographs

that were identified by, and referred to in the testimony of, the witnesses who testified by deposition at San Francisco, Hanford, Riverside and San Diego, being pictures of the man each claimed to have seen, and for that reason they need not be reproduced in this record.

76. Exhibit "J." Picture of Olympic Cafe at Hanford.
77. Exhibit "O." Two pages from Hanford Hotel Register.
78. Exhibit "P." Bank check from Hedges to Elwood.
79. Exhibit "S." Telegram from Sardam to Langhorne.
80. Exhibit "X." Photograph of boats "logs."
81. Exhibit "Y." Diagram of Ferry-boat "Queen's" deck.
82. This stipulation.

It is hereby stipulated and agreed that this printed record be printed under the supervision of the Clerk of the Circuit Court of Appeals, Ninth Circuit, at San Francisco, California, and expressly waive the provisions of the act of February 13, 1911, relative to the District Court having supervision thereof.

It is hereby further stipulated and agreed by and between all the parties to these actions, in the printing of this record, that all titles, captions, jurats, and verifications be omitted.

Dated at Tacoma, Washington, August 22, 1922.

H. G. FITCH and
HAYDEN, LANGHORNE and METZGER,
Attorneys for Plaintiff.

S. A. KEENAN,
Attorney for Defendant, The Prudential Insurance
Company.

CHADWICK, McMICKEN, RAMSEY &
RUPP,
Attorneys for Defendant, Mutual Life Insurance
Company.

[Indorsed]: Aug. 22, 1922. [452]

No. 3436—No. 3437.

**Certificate of Clerk U. S. District Court to Trans-
script of Record, Etc.**

United States of America,
Western District of Washington,—ss.

I, F. M. Harshberger, Clerk of the United States District Court for the Western District of Washington, do hereby certify the within typewritten pages numbered from 1 to 448, inclusive, to be a full, true and correct copy of so much of the record, papers, testimony and proceedings in the foregoing entitled consolidated causes as are necessary to the hearing of said causes on writs of error therein in the United States Circuit Court of Appeals for the Ninth Circuit and as is stipulated for by counsel of record therein, as the same remain of record and on file in the office of the clerk of said District

Court, and that the same, together with all of the original exhibits in said causes, referred to in stipulation [453] between the parties thereto filed therein August 15, 1922, which original exhibits are transmitted herewith pursuant to the order of the court so directing, constitute the consolidated record on return to said writs of error herein from the judgments of said United States District Court for the Western District of Washington, Southern Division, to the United States Circuit Court of Appeals for the Ninth Circuit.

I further certify that I hereto attach and herewith transmit the original writs of error and original citations issued in said respective causes.

I further certify that the following is a full, true and correct statement of all expenses, costs, fees and charges incurred and paid in my office by and on behalf of the plaintiff in error for making record, certificate and return to the United States Circuit Court of Appeals for the Ninth Circuit in the above-entitled cause, to wit.

Clerk's fees (Sec. 828, R. S. U. S.) for making record and return, 1417 folios at 15¢ each	210.85
Certificate of Clerk to Transcript, four folios at 15¢ each60
Certificate of Clerk20

ATTEST my official signature and the seal of said District Court at Tacoma, this 22d day of August, A. D. 1922.

[Seal]

F. M. HARSHBERGER,
Clerk.

By Ed. M. Lakin,
Deputy Clerk. [454]

[Endorsed]: No. 3918. United States Circuit Court of Appeals for the Ninth Circuit. The Prudential Insurance Company of America, a Corporation, and Mutual Life Insurance Company of New York, a Corporation, Plaintiffs in Error, vs. Maude E. Stewart, Defendant in Error. Transcript of Record. Upon Writs of Error to the United States District Court of the Western District of Washington, Southern Division.

Filed August 26, 1922.

F. D. MONCKTON,
Clerk of the United States Circuit Court of Appeals for the Ninth Circuit.

By Paul P. O'Brien,
Deputy Clerk.